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Pender County, North Carolina
Sharon Lear Willoughby, Register of Deeds

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STATE OF NORTH CAROLINA

COUNTY OF PENDER

**DECLARATION OF PROTECTIVE COVENANTS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS**

FOR

EAST WYND

***THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF
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**DECLARATION OF PROTECTIVE COVENANTS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS**

FOR

EAST WYND

PENDER COUNTY, NORTH CAROLINA

THIS DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR EAST WYND (this "Declaration") is made by Signature Top Sail NC, Ltd., a Texas limited partnership, doing business in North Carolina as Signature Top Sail NC, Ltd., LP (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate, located in Pender County, North Carolina, which is more particularly described in Exhibit A (hereafter the "Property") attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision.

WHEREAS, the undersigned Declarant desires to develop on the Property, a residential subdivision (hereinafter, together with any property added thereto, called the "Subdivision"); and

WHEREAS, the Declarant desires to maintain design criteria, location and construction specifications, and other controls to assure the integrity of the Subdivision; and

WHEREAS, each owner of a Lot in the Subdivision will be required to maintain and construct homes in accordance with the design criteria herein contained; and,

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in the Subdivision and for the maintenance of common lands and facilities, if any, and to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

NOW THEREFORE, pursuant to Chapter 47F of the North Carolina General Statutes (the "Planned Community Act"), the Declarant declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I: NAME

The Subdivision of the Property created by this Declaration shall be known and designated as East Wynd.

ARTICLE II: DEFINITIONS

Unless otherwise specified, the capitalized terms in this Declaration and the attached exhibits shall be defined as follows:

- a. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act, as the same may be amended from time to time.
- b. "Architectural Review Committee" or "ARC" shall mean and refer to the Architectural Review Committee established under Article XV, Section 1, hereof.
- c. "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of State of North Carolina, as the same are or hereafter may be amended from time to time.
- d. "Association" shall mean and refer to East Wynd Homeowners' Association, Inc., its successors and assigns.
- e. "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot.
- f. "Common Area" shall mean and refer to those areas of land, including the facilities and amenities to be constructed thereon, if any, shown and specifically designated as private streets and/or private rights-of-way, "Open Space", "Common Area", "CA" or similar designation on any subdivision map of East Wynd, filed by Declarant or by any other means so designated by Declarant. Such areas are intended to be devoted to the common use and enjoyment of the members of the Association as herein defined, and are not dedicated for use by the general public. Subject to the provisions of Article VIII hereof, any existing and future greenways, common pier(s), median strips, cul-de-sac centers, planting areas, recreational areas and facilities, entrance signage, open spaces, sidewalks, and any other areas designated as "Open Space", "Common Area", "CA" or similar designation on the plat of the Subdivision referred to in Exhibit A hereto shall become Common Areas upon conveyance by Declarant to the Association.

Provided however, the recording and reference to said plat shall not in and of itself be construed as creating any dedications, rights or easements (negative, reciprocal or otherwise), and all such dedications, rights and/or easements being made only specifically by this Declaration, any amendment or supplement hereto or any deed of conveyance from Declarant, its successors or assigns.
- g. "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.
- h. "Declarant" shall mean and refer to Signature Top Sail NC, Ltd., a Texas limited partnership, its successors and/or assigns. A person or entity shall be deemed a "successor and assign" of Declarant only if specifically so designated in a duly recorded written instrument as a successor or assign of Declarant under this Declaration and/or a Supplemental Declaration and shall be deemed a successor and assign of Declarant only as

to the particular rights or interests of Declarant under this Declaration or under such Supplemental Declaration which are specifically designated in the recorded written instrument.

- i. "Declarant Control Period" shall mean the period of time during which the Declarant is entitled to appoint at least a majority of the members of the Board of Directors.
- j. "Declaration" shall mean and refer to this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for East Wynd, as it may be amended from time to time.
- k. "Deed of Trust" a mortgage, deed of trust or other similar security interest recorded in the records of Pender County, North Carolina, which grants, creates or conveys a lien upon one or more of the Lots.
- l. "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property. The Development Period shall recommence each time the Declarant acquires additional land.
- m. "Dwelling Unit" shall mean and refer to a completed single-family home located upon a Lot which contains a minimum of two thousand (2,000) square feet of living area if said home is single story or a minimum of two thousand four hundred (2,400) square feet of living area if said home is two-stories. For the sake of clarity, it is required that any single-story Dwelling Unit shall contain a minimum of two thousand (2,000) square feet of living area, and any two-story Dwelling Unit shall contain a minimum of two thousand four hundred (2,400) square feet of living area.
- n. "Governing Documents" shall mean and refer to the Declaration, the Articles of Incorporation of the Association ("Articles"), the By-Laws of the Association ("By-Laws"), any architectural guidelines and/or procedures ("ARC Guidelines"), and the rules and regulations of the Association.
- o. "Lender" shall mean the holder of any recorded Deed of Trust, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. As used in this Declaration, the term "Institutional Lender" or "Institutional Holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), all corporations and any agency or department of the United States Government or of any state or municipal government, or any other organization or entity which has a security interest in any Lot. In the event any Deed of Trust is insured by the Federal Housing Administration ("FHA") or guaranteed by the Veterans Administration ("VA"), then as to such Deed of Trust the expressions "Lender" and "Institutional Lender" include the FHA or the VA as the circumstances may require, acting, respectively, through the Federal Housing Commission and the Commissioner of Veterans' Benefits or through other duly authorized agents.
- p. "Lot" or "Lots" means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon

which there is constructed a Dwelling Unit that is conveyed to an Owner (as hereinafter defined) by the Declarant. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

- q. "Member" shall mean and refer to an Owner who is a member of the Association as provided in Article IV hereof.
- r. "Operating Deficit" shall mean and refer to funds necessary to meet the budgeted and/or immediate cash obligations of the Association as may be forecast in the annual budget or as may arise during the fiscal year, which cannot be met by application or use of funding through Regular Assessments, Special Assessments, or any other sources of revenues available to the Association.
- s. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee-simple title to any Lot(s) later developed, but shall not mean or refer to any Lender or subsequent holder of a Deed of Trust, unless and until such Lender or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term "Owner" shall also refer to the heirs, successors and assigns of any Owner.
- t. "Parcel" shall mean a separately described subdivision of the Property, which may be held as a separate tract. If an easement exists on all or a portion of a Parcel as an appurtenance to another Parcel, such appurtenant easement shall also be considered a part of the Parcel to which the easement is appurtenant.
- u. "Plat" means the subdivision plats of the Property, which are recorded with the Register of Deeds of the county in which the Property is located, as the same may be hereafter amended or supplemented pursuant to this Declaration.
- v. "Provider" shall mean and refer to the entity or entities which provides Provider Services.
- w. "Provider Services" shall mean, without limitation, television, cable, computer connection and/or internet connection by line, wire, cable, fiber optic, main, duct, pipe conduit, pole, antenna, microwave, satellite dish, or wire or wireless technology.
- x. "Setback" shall mean an area along the boundary of a Lot where no building or other structures including, without limitation, fences, patios or decks shall be permitted, without the express written permission of Declarant. However, the location of normal air handling and heat, ventilation and air conditioning units within such Setback area shall be permissible so long as it is in conjunction with an approved residential building or other structure located on a Lot.
- y. "Subsequent Amendment" or "Supplemental Declaration" shall mean an amendment to this Declaration which adds property to this Declaration and makes it subject to the Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of the Declaration.
- z. "Wetland Areas" shall mean and refer to those areas delineated as wetland by the U.S. Army Corps of Engineers and shown and referred to as "Wetlands", "Wetland Fill Area",

"existing wetland", and/or "Wetlands Buffer", or any similar designation, if any, on the recorded plat of the Subdivision.

ARTICLE III: PROPERTY RIGHTS, EASEMENTS AND ENCROACHMENTS

Section 1. Owner's Easements of Enjoyment of Common Area. Subject to the provisions of Section 2 of this Article, every member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot. This right and easement shall be for use in common with all other such members, their tenants, guests and invitees. In the event that Declarant incorporates additional land under the provisions of this Declaration pursuant to Article XI, Section 2 of this Declaration, all Owners of Lots within such additional phases shall have the same rights and privileges with regard to use of the Common Areas as the Owners of Lots originally made subject to this Declaration.

Section 2. Extent of Member's Easements. The rights and easements created hereby shall be subject to the following:

- a. The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;
- b. The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- c. The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such activities) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;
- d. The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;
- e. The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds ($\frac{2}{3}$) of the membership of each class of members of the Association;
- f. The easements reserved elsewhere in this Declaration and the right of the Association through its Board of Directors to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;
- g. Subject to Article XIII, Section 2, the right of the Association through its Board of Directors to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors or otherwise allowed pursuant to this Declaration, as amended;
- h. If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to such Lot Owner's easement for ingress and egress;
- i. The right of the Declarant to erect any signs (i) advertising the sale of the Property or any Lot and/or (ii) identifying the Subdivision;

j. The right, but not the obligation, of the Declarant and its assigns to install, or cause to be installed, Technology Infrastructure in Common Areas;

k. The right of the Declarant and the Association to add amenities or alter existing amenities from time to time; and

l. All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3. Delegation of Use.

a. Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owners' family who occupy the residence of the Owner within the Subdivision.

b. Tenants. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to the Owner's tenants who occupy a residence within the Subdivision.

c. Guests. Any recreational facilities and other Common Areas may be utilized by guests of Owners or tenants subject to this Declaration, the By-Laws of the Association and to the rules and regulations of the Association governing said use and as established by its Board of Directors.

Section 4. Certain Obligations and Access Rights to the Common Area.

a. Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

b. The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property.

Section 5. Rules and Regulations. The use of the Common Areas by an Owner or Owners, and all other parties authorized to use same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established by the Association governing such use, or which may hereafter be prescribed and established by the Association.

Section 6. General Drainage, Utility, Sewer and Other Development Easements. The following rights and easements reserved in this Section 6 shall not be exercised with respect to a Lot, after the conveyance of such Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section 6 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property. The following rights and easements reserved in this Section 6 are not intended to permit, and shall not be

construed to permit, (i) any Provider to enter any easement reserved in this Section 6, or (ii) the Association to install or authorize to be installed, in any easement reserved in this Section 6, any Technology Infrastructure or any other equipment, facilities, or installations of any type for the purpose of bringing Provider Services to any Lot, Dwelling Unit, and/or any improvements on a Common Area.

a. Declarant hereby reserves unto itself, and unto any public or private utility, a utility/drainage easement (the "Utility/Drainage Easement"), as designated on the Plat, or any similar designation thereof, for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be installed and maintained all electrical, telephone, water, gas, and sanitary and storm sewer, to serve any Dwelling Unit constructed on the Property. This Utility/Drainage Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement identified or designated upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

b. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

c. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

- i. Relocate, alter or otherwise change the location of any Utility/Drainage Easement, Sign and Facilities Easement, or any facility at any time located therein or thereon;
- ii. Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,
- iii. Describe more specifically or to change the description of Utility/Drainage Easement, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Register of Deeds of the County in which the Property is located.

d. The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

Section 7. Declarant's General Network Easement. The following rights and easements reserved and retained in this Section 7 shall not be exercised with respect to a Lot, after the conveyance of such Lot in a

manner that (i) unreasonably and absolutely affects any Dwelling Unit or portion thereof located upon such Lot or the Owners use or enjoyment thereof or (ii) unreasonably affects the rights of ingress and egress to such Lot. The Declarant hereby forever reserves, retains, and is granted a blanket, exclusive, perpetual easement over, above, across, under, upon, along, and through the Property and all Lots, Common Areas, and streets located therein (iii) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, removing, improving, expanding and otherwise servicing the Technology Infrastructure, and any other equipment, facilities, and installations of any type bringing Provider Services to any Lot, Dwelling Unit, and/or any improvements on the Common Area. This General Network Easement may be conveyed, assigned, and transferred by the Declarant, in the Declarant's sole discretion, without notice or consent of the Association, the Owners, or any other person. The General Network Easement is for the exclusive benefit of the Declarant, and its successors, designees and assigns, and is an appurtenant easement which runs with the Property and all Lots, Common Areas, and streets therein. Only those Providers which receive the Declarant's explicit written permission shall be permitted within the General Network Easement. The Declarant's right under this Section 7 shall survive beyond the Development Period and exist in perpetuity, and this General Network Easement shall be in addition to any easement identified or designated on a plat. Nothing herein or otherwise shall prevent Declarant from continuing existing relationships for services or entering into ongoing relationships for services, which relationships shall be binding upon the Association.

Section 8. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use, in the case of an emergency, by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 9. Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the Association for the common enjoyment of all residents in the Subdivision.

Section 10. Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof (hereafter collectively "DU&E Easements"), which are hereby reserved to the appropriate governmental entities, public utilities, private utilities and Provider(s) or Declarant for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities, the Community Network and Technology Infrastructure; provided, however, that the only Providers which receive the Declarant's explicit written permission shall be permitted to be within the DU&E Easements. Purchasers of Lots in this Subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Article XV, Section 5, below, shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all

times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 11. Designated Easements for Landscaping, Mounding, Screening and Signage. Within any strips of ground shown or designated on a Plat as a landscape easement, berm easements, landscape maintenance easement, landscape maintenance access easement, or by any similar language indicating a landscaping purpose, Declarant hereby reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to (i) erect signs which advertise the Property or availability of Lots, and/or identify the Subdivision and (ii) install landscaping, mounding, walls, and screening. Notwithstanding anything in this Declaration to the contrary, except as approved by Declarant or the Architectural Review Committee, no planting shall be done, and no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected between (iii) the area of any such easements and (iv) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

Section 12. Intentionally deleted.

Section 13. Street Dedication. All streets now or hereafter located upon the Property are hereby private. The Declarant shall have the right, but not the obligation, to cause such streets and/or roads to be dedicated to any governmental entity.

Section 14. Easement Work. Notwithstanding any architectural approval under Article VI, below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever planted, to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Sections 9 and 10 above.

Section 15. No Access. There may be strips of ground designated on the Plat as "no access strips", "no access", "no access easement", "no access esmt", or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress, egress and/or traveling, is prohibited on, over, or across any such strips or areas. Furthermore, vehicular access to any Lot shall only be from the adjoining public street and shall not cross any Common Area(s).

Section 16. Reservation of Right to Grant Easement. The Declarant hereby reserves the right, in its discretion, to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements upon, under, over and across the real estate which is adjacent to the Property. Nothing herein or otherwise shall prevent

Declarant from continuing existing relationships for services or entering into ongoing relationships for services, which relationships shall be binding upon the Association.

Section 17. Sales Offices, Property Management Offices and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant, its successors and assigns, the perpetual, alienable and transferable right and easement in and to the Subdivision for the maintenance of signs, sales offices and construction offices, together with such other facilities as in the sole opinion of Declarant reasonably may be required, convenient or incidental to the completion, management, improvement and/or sale of Lots or Common Area. A person or entity shall be deemed a "successor or assign" for this purpose only if so designated in a written instrument executed by Declarant. The Declarant also reserves the right to grant to any builder or builders the right to operate and maintain builder sales offices at any location within the subdivision upon such terms and conditions as the Declarant in the Declarant's sole discretion may determine.

Section 18. Displays. No rule shall abridge an Owner's right to display political, religious, or holiday symbols and decorations on his or her Dwelling Unit of the kinds normally displayed in single-family residential neighborhoods, nor shall any rule regulate the content of political signs. However, the Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Dwelling Unit, including reasonable limitations on size and number. Owners may display one "For Sale" or "For Rent" sign on their Dwelling Units provided such signs are in compliance with the Association's approved template, are a similar size and quality as those used by local real estate brokers and agents and in no event exceed six square feet of surface area.

Section 19. Household Composition. No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Dwelling Unit size and facilities and its fair share use of the Common Area.

ARTICLE IV: MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the North Carolina Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors must be members of the Association.

Section 3. Articles of Incorporation and Bylaws. A copy of the Articles of Incorporation of the Association and Bylaws of the Association are attached hereto as Exhibit B and Exhibit C respectively, and made a part and parcel hereof.

Section 4. Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of not less than sixty (60) days.

Section 5. Classes of Membership and Voting Rights. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association shall be a "Member" of the Association, provided 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. The Association shall have the following three (3) classes of membership:

Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds such interest or interests in any Lot, all such persons shall be members; however, they shall select one (1) member to vote, which such member shall be designated as the "Voting Member" and shall be so designated in writing to the Secretary of the Association. In no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The sole Class B member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the Class A votes plus one. During the Declarant Control Period, the Class B Member shall have the right to appoint the members of the Board. Directors appointed by the Class B Member shall serve at the pleasure of the Class B Member. The Class B Membership and the Declarant Control Period shall cease and be converted to a Class C Membership on the happening of either of the following events:

- i. Upon the sale of One Hundred (100%) Percent of the Lots and Units within the Subdivision to Owners other than Builders, and Declarant no longer owns any of the Property; provided, however, that the Class B Membership shall recommence in the event that the Declarant subsequently records a plat of part of or all of the Property subjecting additional real estate to this Declaration; or
- ii. At such time as the Declarant voluntarily relinquishes its Class B Membership in writing to the Association.

In each case above, the Class B Membership shall recommence in the event that the Declarant reacquires any Lot or Common Area or annexes additional land to the Property as set out herein.

Upon the termination of the Declarant Control Period, directors shall be elected as provided in Article III of the By-Laws.

Class C. The sole Class C Member shall be the Declarant. The Class C Member shall have no voting rights and no assessment obligations. The Class Member shall enjoy certain limited rights under this Declaration, the By-Laws and any regulations, including without limitation the right to: (1) obtain access to, and electronic and/or paper copies of, Association's books and records, including financial and membership data; (2) exercise the Declarant's enforcement powers pursuant to Article V, Section 12, of this Declaration, and (3) call Special Meetings of the Association on any topic or issue it sees fit in its sole discretion, although the Class C Member would not be entitled to vote at said meeting. Class C Membership shall continue after the termination of the Class B Membership and shall only terminate at the voluntary discretion of the Declarant, although there is no requirement that it be terminated.

ARTICLE V: COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

a. Assessments to be assessed against the Owners pursuant to the authority vested in the Association under Section 3 hereof ("Regular Assessments") (for maintenance, repairs and ordinary operating expenses, including Common Expenses); and

b. Assessments to be assessed against the Owners pursuant to the authority vested in the Association under Section 4 hereof ("Special Assessments") for capital improvements and Operating Deficits and for special maintenance or repairs as provided in this Declaration.

Such Assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such Assessments, together with prejudgment interest computed at a rate of ten percent (10%) per annum, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Regular Assessments. The Regular Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 3. Regular Assessments. The Board of Directors from time to time may fix the Regular Assessment, without any vote of the membership.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Assessments authorized above, the Board of Directors of the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any Operating Deficits which the Association may from time to time incur.

Section 5. Quorum. Written notice of any meeting of the members of the Association called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting

Section 6. Uniform Rate of Assessment. Regular Assessments and Special Assessments for capital improvements and to recover Operating Deficits must be fixed at a uniform rate for all Lots.

Section 7. Operating Deficit. For so long as the Class B membership shall exist, in lieu of paying Assessments on the Lots owned by Declarant, Declarant may, at its option, pay to the Association a contribution equal to the Operating Deficit of the Association for that year. The extent of the Declarant's obligation to make up the Operating Deficit shall be restricted to such amounts as are necessary for the Association to meet its cash obligations and achieve a balanced zero budget, inclusive of budgeted reserve funds. In the alternative, should Declarant elect to pay assessments for each Lot owned by Declarant, any obligation of Declarant to fund the Operating Deficit shall terminate and be of no further force and effect for that year. Furthermore, any overpayment by Declarant in any year shall be considered a loan to the Association payable upon demand.

DECLARANT WILL NOT BE OBLIGATED TO PAY ANY OPERATING FUND DEFICIENCIES THAT ARE DUE TO NON-PAYMENT OF ASSESSMENTS BY CLASS A OWNERS, AND SUCH LEVIED/ASSESSED BUT UNPAID ASSESSMENTS SHALL NOT BE CALCULATED AS A PART OF THE OPERATING DEFICIT. IN THAT REGARD, NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO RELIEVE OR RELEASE ANY CLASS A OWNER FROM THE OBLIGATION TO PAY ITS RESPECTIVE SHARE OF THE ASSESSMENTS AS AND WHEN DUE. To the extent any such long or short term shortfalls in any way arise from the failure of Owners of Lots to pay Regular or Special Assessments, any such resultant funding Declarant elects to make shall constitute a loan to the Association and shall be entered upon the books and records of the Association as a loan.

For the sake of clarity, once the Declarant becomes a Class C Member, it shall no longer be obligated to pay any Assessments or the Operating Deficit.

Section 8. Date of Commencement of Yearly Assessments; Due Dates. The Regular Assessment provided for herein shall commence as to each Lot within a recorded Plat on the first day of the first month following the recording of this Declaration and if any Supplementary Declaration (as to any additional real estate made subject hereto by such Supplementary Declaration. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property, or both. In such

event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court.

Section 10. Subordination of the Lien to Deeds of Trust; Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first Deed of Trust. The sale or transfer of any Lot pursuant to the foreclosure of any first Deed of Trust on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

Section 11. Capital Contribution. Upon the closing of the initial sale of each lot by the Declarant, its successors and assigns, to an Owner, the Owner of each Lot shall pay an initial contribution to the Association of Two Thousand and No/100 Dollars (\$2,000.00) to provide general operating funds for the Association. Such payment shall not in any way be considered a prepayment of any regular or Special Assessment. Such funds may be used by the Association in such manner as the Board of Directors thereof shall direct.

Section 12. Obligation to Pay Assessments. The Owners for each Parcel are responsible to the Association for payment of all Assessments made against its Parcel. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area owned by the Association or abandonment of his Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Section 12. Exempt Property. The following property shall be exempt from payment of Regular Assessments and Special Assessments:

- (a) All Common Area;
- (b) Any property dedicated to and accepted by any governmental authority or public utility;

Any property designated by Declarant for use as a sales office or model unit (provided that Declarant shall be entitled to terminate any such sales office or model unit exemption in the event such property is no longer used for such purposes).

Section 13. Declarant's Class C Membership Enforcement Remedies.

a. In addition to the remedies outlined above in this Article and in addition to any other remedies or rights reserved to the Declarant under a previously recorded document affecting the Property or a portion thereof, the Declarant's right to enforce the provisions of this Declaration, the By-Laws, the

ARC Guidelines and any regulations shall extend for as long as the Declarant owes any duties or obligations to a governmental body, district, agency, or authority exercising jurisdiction over a portion of the Property, even if the Declarant has already turned over control of the Association to a Member-elected Board of Directors and even if the Declarant's Class B Membership has converted to Class C Membership; provided that the Declarant may exercise the extended enforcement rights described in this section for purposes including, but not limited to, (1) responding to a request or demand of a governmental body, district, agency, or authority exercising jurisdiction over a portion of the Property; or (2) in the sole discretion of the Declarant, preventing an anticipated request or demand of a governmental body, district, agency, or authority exercising jurisdiction over a portion of the Property.

b. The Declarant may exercise its extended enforcement powers described in this Section: (1) through the Association, whereby the Association exercises its enforcement powers under this Declaration in order to adequately respond to, or attempt to prevent, the request or demand of a governmental body, district, agency, or authority; or (2) independently of the Association, whereby the Declarant exercises any and all enforcement powers reserved to it under the Declaration in order to adequately respond to, or attempt to prevent, the request or demand of a governmental body, district, agency, or authority, including without limitation the right to enter any portion of the Property to remedy a violation, the right to impose Assessments for non-compliance and the right to file a lien upon the Lot of the Owner against whom enforcement is being sought for the amount of such Assessments, and the right to bring any and all other legal actions to force compliance by an Owner. In the event the Declarant exercises said extended enforcement powers, all costs incurred by the Declarant, including reasonable attorneys' fees, shall be the responsibility of the Lot Owner(s) against whom enforcement was sought and shall be added to the lien filed by the Declarant against said Lot Owner, if applicable. The provisions of this section provide the Declarant with the option of exercising extended enforcement powers under the Declaration as a Class C Member, however they do not impose any duty or obligation upon the Declarant to do so, and these rights shall extend beyond the termination of the Declarant's Class B Membership.

Section 14. Declarant Agreements with Builders. Declarant has the right to enter into agreements with Builders which address, among other things, exemptions from payment of Assessments for certain time periods, and upon such terms and conditions that Declarant may establish in its sole discretion. In that regard, any such agreement(s) shall be binding on (i) the Association, (ii) any successor Declarant(s) and/or (iii) any future assignees of Declarant rights. Further, in the event Declarant does, in fact, enter into any such agreement(s), Declarant shall notify the Association of the terms thereof.

ARTICLE VI: USE OF PROPERTY

Section 1. Lot Use and Conveyance. Subject to the provisions hereinafter contained, all Lots shall be used exclusively for single family detached residential purposes, except that Declarant reserves unto itself, its successors and assigns, the right to develop additional real estate as single family detached residences, duplexes or such other form as Declarant may, in its sole and absolute discretion, determine. Declarant may, in its sole and absolute discretion, submit all or any such portions of the additional real estate to the terms of this Declaration, and may include such additional covenants, conditions and restrictions affecting such additional real estate as Declarant may deem necessary. Declarant may elect not to submit all or any portion of the additional real estate to the terms of this Declaration and Declarant specifically reserves such right. Furthermore, Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association,

and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

However, Declarant may maintain sales offices, models and construction offices upon one or more Lots until all Lots located or to be located within the Properties (including all subsequent phases) have been sold to third parties or Declarant no longer has the right to incorporate additional land under the terms of this Declaration. Easements are hereby reserved through the Common Area, including, without limitation, the easements shown on the plat(s) of the Property for use by Developer, for its use and the use of its agents, employees, licensees and invitees, for all purposes in connection with the use, development and sales of the Property, including, without limitation, for the erection and maintenance of signage.

Section 2. Leasing. Subject to the provisions contained in this Section and in the remainder of this Declaration, any Lot may be leased by its Owner.

No timesharing, interval ownership or other related ownership scheme where the right to exclusive use rotates among multiple owners or members of the program shall be permitted. In addition, no leasing or rental of any Dwelling shall be permitted, having a duration of less than one (1) year nor shall less than the entirety of any Dwelling be leased. Declarant or its assignee may, however, maintain a sales office, models and construction office upon one or more Lots until all Lots to be located within the Subdivision have been sold. Furthermore, any such rental or leasing of any Lot shall be in writing with a copy of such agreement to be provided to the Association within ten (10) days after execution. In the event the Association requests a copy of such lease agreement, the Owner shall provide it within ten (10) days upon request of the Association. Notwithstanding such leasing or rental of a Lot, the Owner thereof shall remain primarily responsible for ensuring the compliance of the tenants with this Declaration and the rules and regulations of the Association.

Section 3. Maintenance and Landscaping of Lots. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkempt condition of buildings or grounds on such Lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area. Each Owner shall maintain such Owner's Lot and shall keep underbrush and weeds mowed. Such maintenance obligation shall also extend to the portion of any Common Area and/or public street right-of-way located between the boundary lines of each Lot and any pavement within such street right-of-way, and to the portion of any Common Area located between the boundary line of each Lot and the waterline of any pond, stream or other body of water located within such Common Area. Undeveloped lots must be maintained as needed.

Section 4. Nuisances. No noxious, unlawful or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood. No plants, poultry, animals, junk, junk automobiles, or devices or things of any sort, the normal activities or existence of which are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood shall be placed, kept or maintained on any Lot. Without limiting the foregoing, exterior lighting may not be so installed on any Lot so as to illuminate any portion of a neighboring Lot or to shine into any window or otherwise enter a Dwelling located on an adjoining Lot. Any bottled gas containers larger than twenty (20) pounds which are not for the purpose of bringing Provider Services to any Lot, Dwelling Unit, and/or any improvements on a Common Area shall be buried underground in accordance with any applicable ARC Guidelines and/or regulations and shall be buried underground in accordance with any applicable ARC Guidelines and/or

regulations. No lot shall be used for storage of building materials prior to the issuance of the building permit for the primary residence.

Section 5. Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 6. Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 7. Sign Limitations. No sign of any kind, other than those installed by Declarant, the Association, or a Builder, may be displayed to public view on any Lot, except that one (1) sign with an area of not more than six (6) feet and of a design approved by Declarant may be displayed with the purpose of advertising the Lot for sale.

Section 8. Prohibition Against Business Activity. No business activity, including but not limited to, a rooming house, boarding house, gift shop, antique shop, landscape business, professional office or beauty shop or the like or any trade of any kind whatsoever (in which clients or members of the public regularly come to any Lot or any significant business traffic is generated in the Subdivision) shall be carried on upon any Lot or Lots. Provided, however, that nothing contained herein shall be construed so as to prohibit use of any portion of a residence as a home office, so long as no clients or members of the public regularly come to any Lot and no significant business traffic is generated in the Subdivision on account of such use. Provided further, that nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on said Lots, or the showing of said houses for the purpose of selling said houses in the Subdivision. Nothing herein shall be construed to prevent the Declarant or its permittees from erecting, placing or maintaining signs, structures and offices as Declarant may deem necessary for its operation and sales in the subdivision.

Section 9. Mining, Drilling and Excavation. No derrick or any other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Subdivision nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or materials of any kind be produced on or extracted from the premises.

Section 10. Garbage Disposal. Each Lot Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Declarant, or a rollout garbage rack of the type approved by the Declarant, which shall be visible from the streets on garbage pickup days only. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other disposal of garbage on any Lot or within the Subdivision shall be permitted (except licensed contractors may burn construction debris during the period of construction of improvements on any Lot if they have been properly permitted). Provided, however, that the Declarant shall be permitted to modify the requirements of this Section where necessary to comply with orders of governmental bodies.

Section 11. Outside Storage. All equipment, garbage cans, trash receptacles, service yards, woodpiles or storage piles shall be screened (form of screening must be approved by the Architectural Review Committee pursuant to Article XIV) and kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers. No clotheslines shall be erected or maintained upon the Property.

Section 12. Parking Regulations/Prohibited Vehicles. There shall be no outside storage or parking upon any portion of the properties of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than personal-use pick-up trucks and sport utility vehicles), camper, motorized camper

or trailer, boat or other water craft, boat trailer, motorized go-cart, or other related forms of transportation devices. Any Owner desiring to keep or park any Commercial Vehicle within the Subdivision shall submit a request for approval for such Commercial Vehicle (and any other documentation required by the Architectural Review Committee) to the Architectural Review Committee for review in accordance with Article XV of this Declaration. For purposes of this Declaration, "Commercial Vehicle" shall be deemed to include cars, pick-up trucks and vans in styles normally used for private purposes but painted with or carrying commercial advertising, logos, or business names or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle or that extend beyond the length or width of the vehicle. No oversized/commercial vehicle (a vehicle wider than and/or longer than a standard parking space, 19 feet maximum, any vehicle having more than two (2) axles, or those vehicles greater than 7,000 pounds) may park on the premises. No Owners or other occupants of any portion of the properties shall repair or restore any vehicle of any kind upon or within a property subject to this Declaration except (i) within enclosed garages, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. No parking of vehicles on the streets of the Subdivision shall be permitted except for temporary parking of a vehicle for a period of not more than 24 hours within a two (2) day period. No parking of vehicles on lawns, grass, etc., of the properties shall be permitted. Violators of the prohibitions contained in this Section shall be subject to having their vehicles towed, at the Owner's expense, by or at the direction of the Association, and to the levy of fines by the Association in such amount as may be determined from time to time by the Board of Directors. This provision shall not preclude commercial vehicles from being on the property temporarily (less than 24 hours) to provide services to the Association or a resident. Additional rules and regulations regarding use, repair, parking and storage of vehicles in the properties may be promulgated from time to time by the Board.

Section 13. Sewer System. Except as provided herein, private septic tanks and surface toilets are not permitted in the Subdivision. The grantee of any Lot assumes all responsibility for obtaining the necessary permits for attaching to the public sanitary sewer and water system for the project. Private septic tanks shall be permitted on Lots 96-108, inclusive, provided that such tanks have been approved by the ARC in accordance with Article XV.

Section 14. Firearms and Fireworks. No firearms or fireworks of any variety shall be discharged upon the Lots or Common Areas. The term "firearms" shall include, without limitation, guns, "B-B" guns and pellet guns.

Section 15. Animal and Pets. No animals, wildlife, livestock, reptiles, or poultry of any kind shall be raised, bred, or kept on any portion of the Subdivision, except that dogs, cats, or other usual and common household pets may be permitted in a Dwelling. Dogs shall be leashed and under the control of the owner at any such time that the dog(s) is not within the bounds of the respective Owner's Lot. No dogs shall be permitted to roam the property and the Association may have strays and dogs that are not leashed and are found off their owner's lot picked up by governmental authorities. Those pets which, in the sole discretion of the Association, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Subdivision shall be removed upon request of the Association. No pets shall be kept, bred, or maintained for any commercial purpose. Pets shall only be permitted on the Common Areas if such portions thereof are so designated by the Association. All persons bringing a pet onto the Common Area shall be responsible for immediately removing any solid waste of said pet.

Section 16. Animal Kennels. No animal quarters or kennels may be constructed unless approved by the ARC pursuant to Article XV.

Section 17. Wells and Irrigation Systems. No sprinkler or irrigation systems of any type that draw upon water from creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the

Subdivision shall be installed, constructed, or operated within the Subdivision by any person, unless prior written approval has been received from the Declarant. In that regard, any irrigation system must draw water from the public utility company, and said irrigation system must be approved by the ARC pursuant to Article XV. Each Owner is permitted to install a private water well and/or individual drinking water supply system on the Owner's respective Lot, provided that said well and/or system must be approved by the ARC pursuant to Article XV.

This Section shall not apply to the Declarant, and it may not be amended without Declarant's written consent so long as Declarant has the right to add property to the Subdivision in accordance with Article XI, Section 2 of this Declaration.

Section 18. Docks, piers, landings, wharfs and bulkheads. Except those that may be constructed by the Declarant and except as provided herein, no dock, pier, landing, wharf or bulkhead shall be constructed on any portion of the detention ponds, nor attached to the shoreline or banks thereof. Bulkheads may be constructed by the respective Owner(s) of Lots 88 through 109, inclusive, provided that the construction must be approved by the ARC pursuant to Article XV. Piers and docks may be constructed by the respective Owner(s) of Lots 102 through 108, inclusive, provided that the construction must be approved by the ARC pursuant to Article XV.

Section 19. Wetland Areas. Lot Owner(s) are and shall be prohibited, unless prior written approval is obtained from the U.S. Army Corps of Engineers (the "Corps"), from filling, draining, flooding, dredging, impounding, clearing, burning, cutting or destroying vegetation, cultivating, excavating, erecting, constructing, or otherwise doing any work in the Wetland Areas; introducing exotic species into the Wetland Areas; and from changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters, and any other discharge or activity requiring a permit under clean water or water pollution control laws and regulations, as amended. Violation of this covenant shall subject Lot Owner(s) to enforcement actions by the Corps, the U.S. Department of Justice, and/or the North Carolina Department of Environmental Quality (DEQ). The perimeter of the Wetland Areas shall at all times be plainly marked by permanent signs saying "Protected Natural Area" or by an equivalent, permanent marking system.

Section 20. Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first Deeds of Trust, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 21. Development and Sale Period. Nothing contained in this Article shall be construed or interpreted to restrict the activities of Declarant in connection with the development of the Property and sale of Lots. During the Development Period, Declarant shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant, as in the sole opinion of Declarant may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, flags, banners, parking areas, model residences, construction offices, sales offices and business offices.

Section 22. Mailboxes. Mail receptacles shall be uniform and conform to design standards promulgated by Declarant (or after the Development Period, by the Architectural Review Committee). Such mail receptacles will be kiosks throughout the community in such locations to be designated by Declarant. A perpetual easement for the location, maintenance and use of such mail kiosks shall exist. The Association shall have the right to require maintenance and/or replacement of the aforesaid mail kiosks when such maintenance and/or replacement is necessary in Association's sole discretion.

Section 23. Wetlands. The Declarant reserves the right to make perpetual conservation easements or similar type restrictions on usage in any Common Areas or within any wetland areas on any Lot(s).

Section 24. Natural Gas Requirement. The Subdivision is intended to be served by a natural gas provider. In that regard, in order for any such provider to be able to provide natural gas, each Dwelling Unit is required to use natural gas for the heating of water.

ARTICLE VII: CONSTRUCTION IN ACCORDANCE WITH PLANS AND SPECIFICATIONS

Section 1. General. All structures of every type and description shall be constructed, placed or erected within the Subdivision in accordance with the provisions of this Article VII together with other applicable provisions of this Declaration. Only new construction of residential buildings shall be permitted, it being the intent of this covenant to prohibit the moving of an existing building or portion thereof on a lot and remodeling or converting same into a Dwelling.

Section 2. Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot within shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 3. Setbacks. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof, except as provided in Article XV, Section 4; provided, however, except that in no case will such fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines. The minimum side yard and minimum rear yard requirements shall be those as set forth on the plat. However, (a) the location of normal air handling and heat, ventilation and air conditioning units within such Setback area shall be permissible so long as it is in conjunction with an approved residential structure on said Lot, and (b) roof overhangs not to exceed eighteen (18") inches from and as a part of the main dwelling may extend unto the Setback area.

Section 4. No Impediments. Notwithstanding anything in this Declaration to the contrary, and unless permitted pursuant to the terms of the easement in question, no planting shall be done, and no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of easements which in any way interfere with the operation and/or use of the easement(s), except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected between (iii) the area of any such easements and (iv) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

ARTICLE VIII: EXTERIOR MAINTENANCE, REASONABLE ACCESS AND MAINTENANCE OF
COMMON AREA

Section 1. Exterior Maintenance. Except as specifically provided in this Declaration, each Owner shall maintain the structures and grounds on each Lot, at all times, in a neat and attractive manner. Each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. All fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

a. Declarant-Installed Fence. Declarant intends to construct a six (6') foot pine, board on board fence with 2x4 treated cap and 1x4 trim board below (the "Fence") within the 20' Drainage Easement on the south side of the right-of-way known as Planters Walk. No rear perimeter fencing along the north side of the right-of-way known as Lookout Point will be constructed by Declarant. Each Owner shall be responsible, at its sole cost, for maintaining the respective portion of the Fence located on said Owner's Lot. Maintenance of the Fence includes replacement of the respective portion of the Fence if necessary. The Association can promulgate standards by which the Fence is maintained and/or replaced, including maintenance of a uniform color. In that regard, while not required, the Association can send notices to applicable Owners in the event their respective portions of the Fence are not maintained pursuant to said standards.

Section 2. Maintenance of Common Area.

a. Except as otherwise provided in Article VI, Section 4, of this Declaration, the Association, as part of its duties, and as part of the Common Expenses, shall provide for:

- i. Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area;
- ii. Maintenance of the entry signs, permanent subdivision identification sign, and landscaping installed by the Declarant in any Common Area, or any Landscape Easement, Landscape Maintenance Easement, Landscape Maintenance Access Easement or similar easement;
- iii. The maintenance of any street lights which are installed by Declarant and which are not located upon any Lot; and,
- iv. The maintenance of any brick surface, stucco or masonry installed by Declarant on any internal street or entryway.
- v. The maintenance of all streets within the Subdivision.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

b. Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

Section 3. Access Easement. The authorized representatives of the Association, the Board of Directors and the Managing Agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with maintenance only, repairs or replacements of or to the Common Area owned by the Association or any items deemed as Common Area for purposes of maintenance only, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.

ARTICLE IX: INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not reasonably available, then, at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard. The Board shall also obtain a public liability policy covering the Common Areas, Association, and its Members for all damage or injury caused by the negligence of Association or any of its Members or agents. The public liability policy shall have at least a One Million and No/100 (\$1,000,000.00) Dollar single limit as respects bodily injury and property damage, a Two Million and No/100 (\$2,000,000.00) Dollar aggregate limit. Premiums for all insurance required under this Section shall be common expenses of the Association. This policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be a common expense of Association. Cost of insurance coverage obtained by Association for the Common Area shall be included in the assessment. All such insurance coverage obtained by the Board of Directors shall be written in the name of Association as Trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

a. All policies shall be written with a company licensed to do business in North Carolina which holds a Best's rating of A or better as is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating;

b. All policies on the Common Area shall be for the benefit of Association and Declarant shall be named as additional insured;

c. Exclusive authority to adjust losses under policies in force on the Common Areas obtained by Association shall be vested in Association's Board of Directors;

d. In no event shall the insurance coverage obtained and maintained by Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners; and

e. Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

- i. a waiver of subrogation by the insurer as to any claims against Association's Board of Directors, its manager, and Owners and their respective tenants, servants, agents, and guests;
- ii. that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of Association or its duly authorized manager without prior demand in writing delivered to Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by Association, its manager, its Owner, or Deed of Trust;
- iii. that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and
- iv. that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. However, no fidelity bond shall be required as long as the Class B Member exists. The amount of fidelity coverage shall be determined in the Directors' best business judgment but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

The Association may purchase officers' and directors' liability insurance, if reasonably available, and the Board of Directors of Association approves the purchase of same. However, every director and every officer of the Property Owners Association shall be indemnified by Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him/her in connection with any proceeding to which he/she may be a party, or in which he/she may be become involved by reason of his/her being or having been a director or officer of Association, whether or not he/she is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the director or officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interest of Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

a. If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Areas or, in the event no repair or reconstruction is made, shall be retained by and for the benefit of Association and placed in a capital improvements account.

b. If it is determined, as provided in Section 4 of this Article, that the damage or destruction to the Common Areas for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Subsection (a) above. However, repair or replacement of the affected Common Areas must be made unless prevented by law or governmental rule or regulation.

c. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

Section 3. Damage and Destruction.

a. Immediately after the damage or destruction by fire or other casualty to all or any part of the properties covered by insurance written in the name of Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty.

b. Any damage or destruction to the Common Areas shall be repaired or reconstructed unless the Voting Members representing at least sixty-seven (67%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Lender shall have the right to participate in the determination of whether the Common Areas damaged or destroyed shall be repaired or reconstructed.

c. In the event that it should be determined in the manner described above that the damage and destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then, and in that event, the affected portion of the Common Area shall be restored to their natural state and maintained by Association in a neat and attractive condition.

Section 4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners in proportion to the number of Lots owned; provided, if the damage or destruction involves a Lot(s), only Owners of the affected Lot(s) shall be subject to such assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE X: RIGHTS OF LENDERS

The following provisions are for the benefit of holders, insurers and guarantors of first Deeds of Trust on Lots (together with any improvements thereon) in East Wynd. The provisions of this Article apply in both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Rights of Lenders. In addition to any other rights provided elsewhere in this Declaration to Lenders, any lender or lenders holding a first Deed of Trust or first Deeds of Trust upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 2. Notices of Action. An institutional holder, insurer, or guarantor of a first Deed of Trust which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Deed of Trust relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- a. Any condemnation loss or any casualty loss which affects a material portion of East Wynd which affects any Lot on which there is a first Deed of Trust held, insured, or guaranteed by such Eligible Holder;
- b. Any delinquency in the payment of assessments or charges owed by a Lot subject to the Deed of Trust of such Eligible Holder, which such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within 60 days;
- c. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- d. Any proposed action which would require the consent of a specified percentage of Eligible Holders.

Section 3. No Priority. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first Lender of a Lot pursuant to its Deed of Trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area Property.

Section 4. Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any "right of first refusal" subsequently granted to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the properties must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first Lender to:

- a. Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the Deed of Trust;
- b. Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor;
or
- c. Sell or lease a unit acquired by the Lender.

Section 5. Unpaid Dues or Charges. Any first Lender who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the Deed of Trust or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the Lender.

Section 6. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Deed of Trust encumbering such Lot Owner's Lot.

Section 7. Failure of Lender to Respond. Any Lender who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Lender within 30 days of the date of the Association's request, provided such request is delivered to the Lender by certified or registered mail, return receipt requested.

Section 8. Books and Records. Pursuant to Section 47-3-118 of the Act, any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, the Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year, except that the Association shall not be required to provide the financial statement for the preceding fiscal year if said fiscal year expired less than 75 days prior to the date of the request.

ARTICLE XI: PHASED DEVELOPMENT

Section 1. Initial Phase. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Pender County, North Carolina, and is more particularly described on Exhibit A attached hereto and made a part and parcel hereof.

Section 2. Additional Real Estate. The Declarant, its successor or assigns to which this right is specifically assigned, may, at its option, bring land adjacent to or near the Property under the provisions hereof by recording a Supplemental Declaration(s) stating its intention to so incorporate such additional land (the "Additional Real Estate"). Declarant may incorporate all or any portion of the additional land under the provisions hereof in any number of additional phases as it may so desire and may, in its discretion, change the character or nature of such future phases, including but not limited to changing the architectural theme, building materials, elevations, and minimum square footage requirements for buildings. Such Supplemental Declaration(s) shall not require the vote or consent of the Association or any Owner. Any such Supplemental Declaration(s) shall be effective upon the filing thereof in the public records of Pender County, North Carolina. Such Supplemental Declaration shall describe the additional land to be brought under the provisions hereof. Declarant may bring such additional land under the terms hereof either in whole or in part and may do so in multiple phases. Upon the Declarant's election to incorporate additional land hereunder, all of such additional land so incorporated shall be as fully covered hereby as if a part of the original Subdivision. All property so incorporated shall be subject to all the declarations, covenants, easements, liens, restrictions and duties as herein contained, together with such additional restrictions and obligations as Declarant may impose on the land being submitted to the provisions of this Declaration by such Supplemental Declaration(s). Declarant shall have the unilateral right to transfer to any other person

or entity the said right to submit the additional land to the provisions of this Declaration. Declarant shall have no obligation to develop any land adjoining the Subdivision in accordance with this Declaration and may develop same in any manner it may desire and further, Declarant, in the event that it should decide to develop any additional land located adjacent to the Subdivision, in its sole discretion, shall have no obligation to make same a part of the Subdivision or subject to this Declaration. THE DECLARANT SHALL BE UNDER NO OBLIGATION TO DEVELOP ADDITIONAL PHASES AND NONE OF THE REMAINING PORTION OF THE PROPERTY DESCRIBED HEREIN SHALL BE DEEMED A PART OF ANY SCHEME OF DEVELOPMENT UNTIL ACTUALLY BROUGHT UNDER THESE RESTRICTIONS AS HEREIN PROVIDED. THE RIGHT TO ADD FUTURE PHASES SHALL TERMINATE 25 YEARS FOLLOWING THE DATE OF THE ORIGINAL EAST WYND DECLARATION.

Section 3. Reservation of Additional Easements and Rights. Declarant reserves for itself and its successors and assigns as developer (and all conveyances by Declarant to Association of Common Area shall be deemed to automatically reserve) easements over, under and across all Common Areas for ingress and egress and for construction and completion of construction and development of future phases including, without limitation, easements for the installation, construction, reconstruction, repair, maintenance and operation of all utility services; said easements to be in addition to and not in lieu of any other rights or easements reserved by Declarant herein or in any supplement hereto or any other conveyance by or to Declarant or its predecessors in title.

Further, Declarant reserves for itself and its successors and assigns, as developer, easements over, under and across all streets or roads now or hereafter construed within the Subdivision for access to the Additional Real Estate, regardless of whether or not the Additional Real Estate is subjected to the provisions of this Declaration.

Section 4. Extension of Roads. Declarant shall have the right, but shall have no obligation, to extend any street or road now or hereafter within the Subdivision, without seeking the approval of Association or any other party, for the purpose of serving additional phases of the Subdivision and/or for serving other parcels of property not included within the Subdivision.

Section 5. Voting Rights. As each phase, if any, is added to the Subdivision, the Lots comprising such additional phase shall be counted for the purpose of voting rights.

Section 6. Identification of Additional Phases. Nothing in this Declaration shall prohibit Declarant from naming or identifying any Phase or portions thereof by a name other than East Wynd and any such other designation shall in no way prejudice the rights or obligations under this Declaration of any Owner of any Lot in any such section or Phase.

ARTICLE XII: DISPUTE RESOLUTION AND LIMITATION OF LITIGATION

Section 1. Consensus for Association Litigation. Except as provided in this Section 1, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Class A Members. This Section 1 shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of lien), (b) the imposition and collection of assessments as provided in Article V hereof, (c) proceedings involving challenges to ad valorem taxation, (d) suits against providers of goods or services pursuant to a contract, or (e) counterclaims or cross-claims brought by the Association in proceedings instituted against it. This Section 1 shall not be amended unless such amendment is made by Declarant or is approved by the percentages votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 2. Agreement to Encourage Resolution of Disputes Without Litigation

a. Declarant; the Association and its officers, directors, and committee members; all Persons subject to this Declaration; and any Person not otherwise subject to this Declaration who agrees to submit to this Article XII (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community or the operation of the Association without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in Section 2 of this Declaration, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 3 in a good faith effort to resolve such Claim.

b. As used in this Article XII, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:

- i. the interpretation, application, or enforcement of the Governing documents;
- ii. the rights, obligations, and duties of any Bound Party under the Governing documents; or
- iii. the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article III of this Declaration, which shall not be subject to review.

The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 3 of this Declaration:

- i. any suit by the Association to collect assessments or other amounts due from any Owner;
- ii. any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;
- iii. any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- iv. any suit in which any indispensable party is not a Bound Party; and
- v. any suit as to which any applicable statute of limitations would expire within 180 days of giving the notice required by Section 3(a) of this Declaration, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article XII.

Section 3. Dispute Resolution Procedures.

a. Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board ("Notice"), stating plainly and concisely:

- i. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- ii. the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
- iii. the Claimant's proposed resolution or remedy; and
- iv. the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

b. Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

c. Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other period as the parties may agree upon), the Claimant shall submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Pender County, North Carolina.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated.

Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

d. Arbitration.

- i. Except as otherwise provided in Section 3(d)(ii), if a dispute, controversy or claim (whether based upon contract, tort, statute, common law or otherwise) (collectively a "Dispute") arises from or relates directly or indirectly to the subject matter of this Declaration, including all property, improvements, furniture, fixtures, appliances and the like conveyed pursuant thereto and if the Dispute cannot be settled through negotiation and mediation as set forth in Sections 3(b) and 3(c), any unresolved Dispute shall be submitted to and settled by binding arbitration pursuant to the Revised North Carolina Uniform Arbitration Act (N.C.G.S.A. Ch. 1, Subch. XV, Art. 45C et seq.) (the "Arbitration Act"). The proceeding shall be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association (the "AAA"). In the event of a conflict between the Arbitration Act and the AAA rules, the Arbitration Act shall control. The Parties shall be entitled to conduct limited written discovery (Interrogatories and Requests

for Production of Documents) of directly relevant evidence only. Additionally, the Parties may conduct limited depositions restricted to depositions of the Parties and designated expert witnesses. The Arbitrator may limit the number of Interrogatories and Requests for Production of Documents upon application of a Party. The arbitration proceedings shall be conducted in the County in which the Home is located, or a mutually agreed upon location, on an expedited basis before a single neutral arbitrator who is a member of the bar of the state where the Home is located, and has been actively engaged in the practice of law for at least fifteen (15) years, specializing in transactions with substantial experience in the subject matter of this Declaration. Any attorney who serves as an arbitrator shall be compensated at a rate equal to his or her current regular hourly billing rate unless the arbitrator agrees otherwise. Upon the request of either party, the arbitrator's award shall include findings of fact and conclusions of law provided that such findings may be in summary form. Unless otherwise deemed appropriate by the arbitrator(s), the prevailing party shall be entitled to an award of all reasonable out-of-pocket costs and expenses (including attorney's and arbitrator's fees) related to the entire arbitration proceedings (including review, if applicable). The arbitration shall be binding and final, and either party shall have the right to seek judicial enforcement of the arbitration award.

- ii. In the event a claim is, or may be, the subject of an express third party warranty issued to a Bound Party, then such claim shall be resolved in accordance with the dispute resolution procedures set forth in the warranty, and the provisions of Section 3(d)(i) shall not and are not intended to apply to such warranty disputes.

In the event a claim is, or may be, subject to provisions of a Purchase Agreement, the provisions of the Purchase Agreement shall control.

- iii. Except as otherwise provided, the Claimant agrees to have any Dispute decided by binding arbitration in accordance with the terms of this Article XII, and, to the extent permitted by law, the Claimant knowingly and voluntarily waives and relinquishes any rights the Claimant might possess to have the Dispute litigated and resolved in a court or by a jury trial. In the event the provisions of this Paragraph shall cause an insurance provider to deny or call into question the availability of insurance coverages, the Parties may deem all or some provisions hereof inapplicable as necessary to preserve coverages.

e. All of the provisions of this Article XII shall survive (and continue to be effective after) Closing and/or any earlier termination of this Declaration. Any party to this Declaration may bring an action, including a summary or expedited proceeding, to compel arbitration of any Dispute to which this Article XII applies in any court having subject matter jurisdiction over such action.

f. Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

ARTICLE XIII: GENERAL PROVISIONS

Section 1. Time of Essence. It is agreed that time is of the essence with regard to these restrictions, protective covenants, limitations, and conditions.

Section 2. Enforcement. Subject to the provisions of Article XIII hereof, in the event of a violation or breach of any of these restrictions by any Owner or agent, or agent of such Owner, Owners of Lots in the subdivision, or any of them, jointly or severally, Declarant, and/or Association shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any such event or to recover damages. In addition to the foregoing, Declarant, its successors and assigns, shall have the right, but shall be under no obligation, whenever there shall have been built on any Lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of Owner if, after thirty (30) days written notice of such violation, it shall not have been corrected by Owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction, or condition contained in this Declaration, however, long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Declarant or Association employ counsel to enforce any of the foregoing covenants, condition, reservations, or restrictions because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Declarant/Association's counsel, shall be paid by Owner of such Lot or Lots in breach thereof. Any amount assessed hereunder shall constitute a lien on such Lot and shall be enforceable as herein provided. Failure of Declarant, Association, or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter. In addition, the Board of Directors shall have the authority to enforce the Covenants and Restrictions, including reasonable rules and regulations as outlined in the By-Laws.

Section 3. Fines. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a reasonable fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, Lessees or employees to comply with any covenant, restriction, rule or regulation, provided notice and hearing procedures set out in Article III, Section 23 of the By-laws are followed. Once imposed, fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth in Article V, Section 1 of this Declaration.

Section 4. Responsibility of Declarant. Declarant herein shall not in any way or manner is liable or responsible for any violation of these restrictions by any person other than itself. In addition, nothing contained in this Declaration shall be deemed to be a representation by Declarant with regard to the requirements of any governmental authority and it shall be the duty of each Owner to comply with any such requirements in addition to the provisions of this Declaration.

Section 5. Rule Against Perpetuities. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then, in the event, such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of North Carolina, and such provision shall be fully effective for said reduced period of time.

Section 6. Binding Effect. All covenants, conditions, limitations, restrictions, easements, and affirmative obligations set forth in this Declaration shall be binding on the Owners of the Lot(s) and their respective heirs, successors, and assigns, and run with the land. All rights, easements and agreements reserved by or granted to Declarant herein shall inure to the benefit of Declarant, its successors and assigns including, without limitation, the right to develop and submit additional phases. Declarant reserves the right in addition to all other rights of Declarant, to assign its rights of consent and approval as set out in this

Declaration and any amendment hereto or supplement thereof, to the Association, or any assignee of Declarant's development rights. At such time as Declarant, its successors and assigns no longer owns any Lots or property in the Subdivision, any right of approval reserved to Declarant by this Declaration shall be exercised by the Association.

Section 7. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner of the records of Association at the time of such mailing.

Section 8. Severability and Waiver. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 9. Amendment of Declaration.

a. By Declarant. For so long as Declarant owns any Lot or Dwelling Unit within the Property, this Declaration may be amended by the Declarant, without the consent or joinder of any other Owner or the Association provided that any such amendment does not materially alter or change any Owner's right to use and enjoyment of such Owner's Lot or Dwelling Unit or of the Common Area as set forth in this Declaration. Any such amendment shall be effective upon recording of same in the Office of the Register of Deeds of Pender County, North Carolina. No amendment shall be binding upon any Lot or Owner until fifteen (15) days after a copy of such amendment has been provided to such Owner.

The covenants and restrictions of this Declaration, and any amendments thereto, are appurtenant to and shall run with and be binding upon the Property and the Owners thereof for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended by a vote of the Owners as set forth below.

b. By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, the covenants, restrictions, easements, charges, and liens of this Declaration may be amended, changed, added to, or derogated only by the affirmative vote or written consent, or any combination thereof, of the Owners holding not less than sixty-seven (67%) percent of the votes of the membership in Association, provided, that so long as there is Class B membership, no amendment adopted by the Owners shall be effective unless and until such amendment is approved in writing by the Declarant. Further, the provisions for voting of Class A and Class B Members as hereinabove contained in this Declaration shall also be effective in voting for changes in this Declaration. In addition, the approval requirements set forth in Article IV shall be met, if applicable. This Declaration shall only be terminated by the affirmative vote or written consent, or any combination thereof, of the Owners holding not less than ninety (90%) percent of the votes of the membership in Association; however, no rights or easements of Declarant under this Declaration shall be terminated without Declarant's written approval, regardless of whether there is a Class B membership.

Section 10. Validity and Effective Date of Amendments. No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of the Declarant (or the assignee of such right or privilege). Any amendment shall become effective upon recording in the Office of the Register of Deeds for Pender County, unless a later effective date is specified in the amendment. Any procedural

challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Section 11. Assignment of Declarant Rights. Declarant reserves the right to assign its rights to a successor or assign who also assumes Declarant's responsibilities.

Section 12. Effective Date. This Declaration shall become effective upon its recordation in the Office of the Register of Deeds for Pender County, North Carolina.

Section 13. Changes in ownership of Lots. Within ten (10) days following any change in the name, address and phone number of a Lot Owner, the new Owner shall give the Board written notice of the changed information and such other information as the Board may reasonably require.

Section 14. Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their Deed of Trust holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

ARTICLE XIV: STORMWATER DRAINAGE & PERMITTING

Section 1. Storm Drainage. The Property and the use thereof is subject to the conditions set forth in State of North Carolina Post-Construction Stormwater Management Permit Number SW8 221003, as renewed and modified from time to time (the "Stormwater Management Permit"), issued by the Division of Energy, Mineral and Land Resources of the Department of Environmental Quality. Pursuant to the terms of that Stormwater Management Permit, the Declarant hereby states that:

1. The following covenants are intended to ensure ongoing compliance with Stormwater Management Permit Number SW8 221003, as issued by the Division of Energy, Mineral and Land Resources (the "Division") under 15A NCAC 02H.1000, effective January 1, 2017 (the Stormwater Management Regulations).
2. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Permit.
3. These covenants are to run with the land and be binding on all persons and parties claiming under them.
4. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the Division.
5. Alteration of the drainage as shown on the approved plans may not take place without the concurrence of the Division.
6. The maximum built-upon area ("BUA") per lot is as follows:

<u>Lot #</u>	<u>Max BUA, sf</u>
1-87	4500
88-101	8000

This allotted amount includes any BUA constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement not shown on the approved plans. BUA has the same meaning as G.S. 143-214.7, as amended.

7. For those lots with the CAMA Area of Environmental Concern, where the Division of Coastal Management calculates a different maximum lot BUA, the governing maximum lot BUA shall be the more restrictive of the two amounts.
8. The maximum allowable BUA shall not be exceeded on any lot until the permit is modified to ensure compliance with the stormwater rules, permit, and the approved plans and specifications.
9. All runoff from the built-upon areas on the lot must drain into the permitted system. This may be accomplished via grading, a stormwater collections system and/or a vegetated conveyance.
10. A 50-foot wide vegetative setback must be provided and maintained adjacent to all surface waters in accordance with 15A NCAC 02H.1003(4) and the approved plans.
11. Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of the stormwater rules is subject to enforcement procedures as set forth in NCGS 143, Article 21.

The stormwater retention facility and other elements of the stormwater drainage system are a part of the Common Elements, and, therefore, the maintenance of these items and the costs thereof, as well as the ongoing compliance with the stormwater permit shall be the Association's responsibility and shall be included in the Association's annual budget.

Section 2. Stormwater Permitting. Declarant may cause certain stormwater management systems to be installed on portions of the Property (the "Stormwater Systems"). The portions of the Property on which the Stormwater Systems have been installed (the "Stormwater Property") may be conveyed, assigned, and transferred by the Declarant, in the Declarant's sole discretion, to the Association, without notice or consent of the Association, and the Association shall be deemed to have accepted such conveyances. In that regard, the permits which relate to such Stormwater Systems (the "Stormwater Permits") may be conveyed, assigned, and transferred by the Declarant, in the Declarant's sole discretion, to the Association, without notice or consent of the Association, and the Association shall be deemed to have accepted such conveyances. Should Declarant convey the Stormwater Property and Stormwater Permits to the Association, the Association shall thereby become the permittee pursuant to such Stormwater Permit(s) and shall be perpetually obligated to maintain the Stormwater Systems pursuant to the Stormwater Permit(s).

ARTICLE XV: ARCHITECTURAL CONTROL

Section 1. Architectural Review Committee. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Review Committee.

Declarant intends that the members of the Architectural Review Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Review Committee, could only conclude that such determination constituted an abuse of discretion.

The Architectural Review Committee has the right, but not the obligation, to inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Neither the Architectural Review Committee nor any agent thereof, nor the Declarant, or Association shall be liable in any way for costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Architectural Review Committee, Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Architectural Review Committee, Association and/or Declarant make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used. All parties should seek professional construction advise, engineering, and inspections on each lot prior to proposing construction.

Section 2. General. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. All applications for approval of any change in the appearance or the color of any part of the exterior of a residence shall be accompanied by the as-built survey (provided to Owner at the closing of the Owner's respective Lot) illustrating such requested change. The Architectural Review Committee may, in its sole discretion, impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning or other governmental codes. The Architectural Review Committee shall be a permanent committee of the Association and shall administer and perform architectural and landscape review and control functions of the Association.

No building, satellite dish mailbox, fence, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, until the end of the Development Period, and thereafter by the Board of Directors of the Association. No approval shall be required for improvements constructed by, or on behalf of, Declarant by Declarant.

Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. Nothing herein shall require the approval of other than substantial changes to the landscaping on any Lot. For purposes of this Declaration, "substantial changes" shall refer to matters such as addition or removal of street trees, changes to the overall landscape design on the Lot and changes to the overall appearance of the Lot. The planting of seasonal plants and flowers and changes or replacements of individual shrubs shall not require approval. However, there shall be no such approval of the planting of hedges, walls, fences, structures and/or other improvements prohibited under Article VII, Section 4, below, and any such approval shall be null and void. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, then the request for approval shall be deemed DENIED.

Section 3. No Waiver of Future Approvals. Each owner acknowledges that the members of the Architectural Review Committee reviewing the applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of these restrictions and applicable regulations, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed work until the work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Architectural Review Committee may refuse to approve similar proposals in the future. Approval of applications or plans for any

work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans or other matters subsequently or additionally submitted for approval.

Section 4. Certificate of Compliance. Any Owner may request that the Architectural Review Committee issue a certificate of compliance certifying that there are no known violations of this Article. The Association shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

Section 5. Fences. The Architectural Review Committee, prior to any installation, must approve any fencing and landscape screening. It is the goal to keep all fencing or screening harmonious with the architectural character of the community.

The exact location, material, color and height of the fence and rendering or photograph thereof shall be submitted to the Architectural Review Committee for written approval at least thirty (30) days prior to proposed construction. If however, approval has not been received by applicant in writing within thirty (30) days after submitted, then said request shall be considered DENIED.

If approved by the Architectural Review Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Architectural Review Committee. Non-professionally installed fences may be inspected by the Architectural Review Committee after completion in order to ensure that the fence is of a professional quality, and final approval of such fence shall be deemed withheld until completion of this final review. All fences shall be kept in good repair by the Owner.

a. Style. Fences must be of an open picket style using black aluminum material with the following height requirements: (i) on Lots which do not contain a pool, the fence shall be of a height of not more than 48" above grade, and (ii) on Lots which do contain a pool, the fence shall be of a height of not more than 54" above grade. Chain link and treated wood fences are prohibited. The Architectural Committee will approve fencing materials, landscape screening materials, design, and location on an individual basis. However, the Architectural Review Committee, in its sole and absolute discretion, may promulgate standards for fence materials and styles whereby any fences must be of uniform style, color and materials.

b. Site Lines and Location of Fence. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas and obstruction of easements will be taken into consideration by the Architectural Review Committee when reviewing fences for approval. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sightline limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb. Except as approved by the Architectural Review, no fencing is allowed forward of the rear corner of the house.

It shall be permissible to screen the heating, ventilation and air-conditioning unit with plantings or one (1) section of fencing which has been approved by the Declarant or the Architectural Review Committee for such purpose.

As provided in Article VII, Section 4, notwithstanding anything in this Declaration to the contrary, and unless permitted pursuant to the terms of the easement in question, no fences shall be erected or maintained in the area of easements which in any way interfere with the operation and/or use of the easement(s), except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no fences shall be erected between (iii) the area of any such easements and (iv) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

Section 6. Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission, receiving antenna or satellite dish (collectively, the "Antennas") shall be erected, placed or maintained on any part of the premises except those expressly permitted pursuant to the applicable FCC Regulations and as set forth in any ARC Guidelines and/or regulations imposed by the Architectural Review Committee, which guidelines shall not conflict with the FCC Regulations. Provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the development. Pursuant to 47 C.F.R. Section 1.4000, as amended, to the extent that the Antennas can be installed in such a manner that does not prevent reception of an acceptable quality signal or as to impose unreasonable expense or delay, the Antennas shall be placed above the roof line at the eave; if such Antenna(s) is placed or maintained in such a manner, the Owner does not need to submit an application for approval to the Architectural Review Committee. If the Antenna(s) is placed or maintained anywhere other than the roof, the Owner shall submit an application to the Architectural Review Committee, pursuant to this Article, which shall include the applicable method of screening material the Owner desires to employ to screen the subject Antenna from view of the street. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

Section 7. Conformity and Approval of Structures. No structure, fence, sidewalk, wall, or other improvement shall be placed or altered on any Lot except in accordance with the provisions of this Declaration.

Section 8. Subdivision of Lot. No Lot shall be subdivided and no building or residence, including porches, decks or projections of any kind, shall be erected so as to extend over or across any of the Setbacks as hereinafter established except as herein provided.

Section 9. Increased Size of Lots. A Lot or Lots may only be subdivided provided the effect is to increase the size of both of the adjoining Lots. In such cases, the Declarant may alter the building lines to conform. Should the Owner or Owners of any Lots and/or portions of Lots which have been combined for a single building site subsequently wish to revert to the original plan of subdivision, or make any other combination which would not be in violation of this restriction, such may be done only if the written consent of the Declarant is first had and obtained. In such instances, the adjoining Lot Owners, or other Owners in the subdivision do not have the right to review, pass on or interfere with such Lots rearrangement, as such rights shall be exclusively that of the Declarant or any successors or assigns to whom the Declarant may expressly have transferred such rights, but the Owner of any other Lot in the subdivision does not, by virtue of such status as an Owner, become any such successor or assign.

Section 10. Alteration of Setback Lines in the Best Interest of Development. Where because of size, configuration, natural terrain, or any other reason in the opinion of the Declarant, it would be in the best

interest of the development of the Subdivision that the setback lines of any Lot should be altered or changed, then the Declarant reserves unto itself, its successors or assigns, and no other, the right to grant a variance to the Lot Owner or in the case of a Lot owned by Declarant, the Declarant may change said setback lines to meet such conditions. The Declarant specifically reserves the right to transfer and assign this right of approval to the ARC hereinafter established. Notwithstanding the forgoing, any proposed change of setback lines that is less than the minimum established by any Pender County, North Carolina zoning ordinance must also be approved by the applicable governmental authorities of Pender County, North Carolina.

Section 11. Temporary Structures. No structure of a temporary character, storage building, shed, tent, shack, basement, garage, barn or other out-building shall be erected, placed, or altered upon any Lot unless same has been approved by the Architectural Review Committee. A storage building conforming to the provisions contained herein may be approved by the Architectural Review Committee to be located on any Lot provided that the same conforms to the ARC Guidelines, if applicable, and such further guidelines as may be promulgated by the Architectural Review Committee from time to time. With respect to material and color, the exterior finish, including the siding and shingles, of any such storage building must conform to and match the exterior finish of the main dwelling house on the Lot and must be permitted by all applicable governmental authorities, as well as the Architectural Review Committee. The location of such storage building must be approved by the Architectural Review Committee and by all applicable governmental authorities, including, but not limited to Pender County. In that regard, such storage building shall only be permitted to be constructed no closer to the Lot boundary line than the setback lines within the rear yard of approvable Lots.

Section 12. Driveways. All private driveways, right-of-ways, and culverts installed therein, shall be of a type and quality approved by Declarant or the ARC and the grade of same shall be set by Declarant or the ARC.

Section 13. Garages. No garage shall be utilized for other than the purpose of parking and storage of vehicles and other types of items normally stored in garages in residential neighborhoods. No garage shall be converted into or used for living space without prior ARC approval.

Section 14. Outside Use of Lots. Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the ARC.

Section 15. Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Subdivision. Exterior sculpture, fountains, gazebos, arboretums, flags, and similar items are subject to Declarant's or ARC's prior approval; provided, however, that nothing contained herein shall prohibit the appropriate display of the American flag, provided such flag is no greater than 4' by 6' in dimension. Should the ARC approve a flag or if such flag is the American flag, the flagpole may only be mounted to the exterior of the Dwelling Unit.

Section 16. Play Structures and Yard Accessories. All yard accessories and play structures, including fixed and portable basketball backboards or hoops, as well as any other fixed game structures, shall be subject to ARC review and prior approval. Should it be determined that a play structure or yard accessory was erected on a Lot without the necessary approval, the Declarant, its agents or assigns shall have the right from time to time to enter said Lot without any liability for damage, wrongful entry, trespass or otherwise for the purpose of removing the unauthorized structure/accessory.

Section 17. Elevation and Drainage Changes. No changes in the elevation, topography or drainage characteristics of any Lot within the Subdivision shall be made without the prior written approval of the Declarant or the ARC once Declarant Class B status has been terminated.

Section 18. Swimming Pools. Only below ground swimming pools constructed in accordance with applicable law and with prior written approval of the ARC shall be permissible in the Subdivision. No above ground swimming pools are permitted in East Wynd. Below ground swimming pools shall be permitted to be located within the side yards of Lots 96-101, inclusive, provided that such pools have been approved by the ARC in accordance with this Article.

Signature page follows.

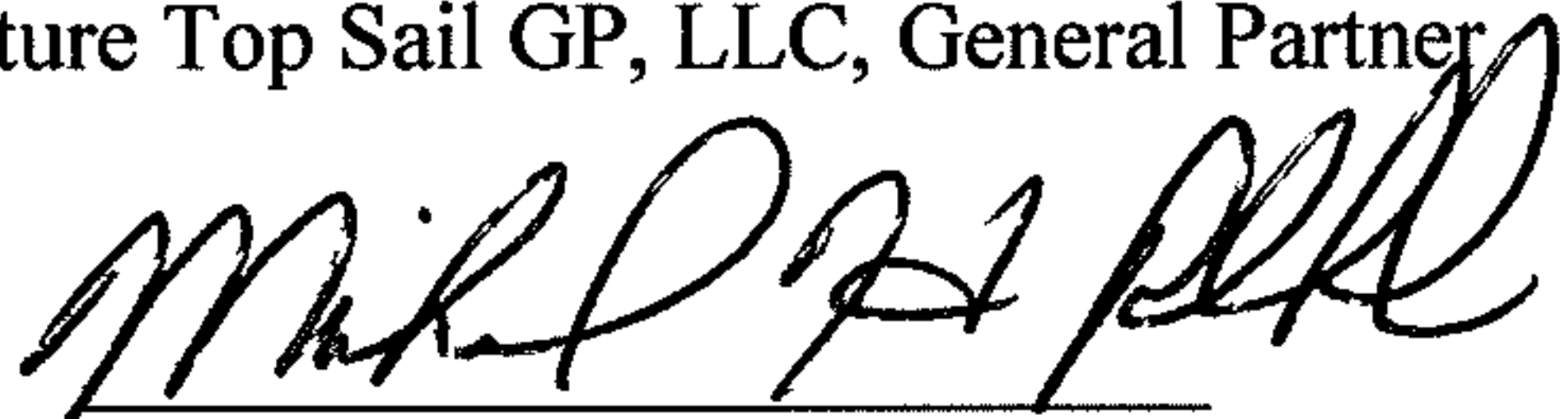
IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed by its proper officers and its corporate seal to be affixed thereto on April 15, 2024.

Signature Top Sail NC, Ltd.

a Texas limited partnership

doing business in North Carolina as **Signature Top Sail NC Ltd., LP**

By: Signature Top Sail GP, LLC, General Partner

By: 

Name: Michael H. Pollak

Its: Manager

New Hanover County, State of North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Michael H. Pollak, as Manager of Signature Top Sail GP, LLC, General Partner of Signature Top Sail NC, Ltd.

Date: April 15, 2024

My Commission Expires:

7-11-2029


Notary Public

Print Name: Roger C White

[Affix Notary Stamp or Seal below]

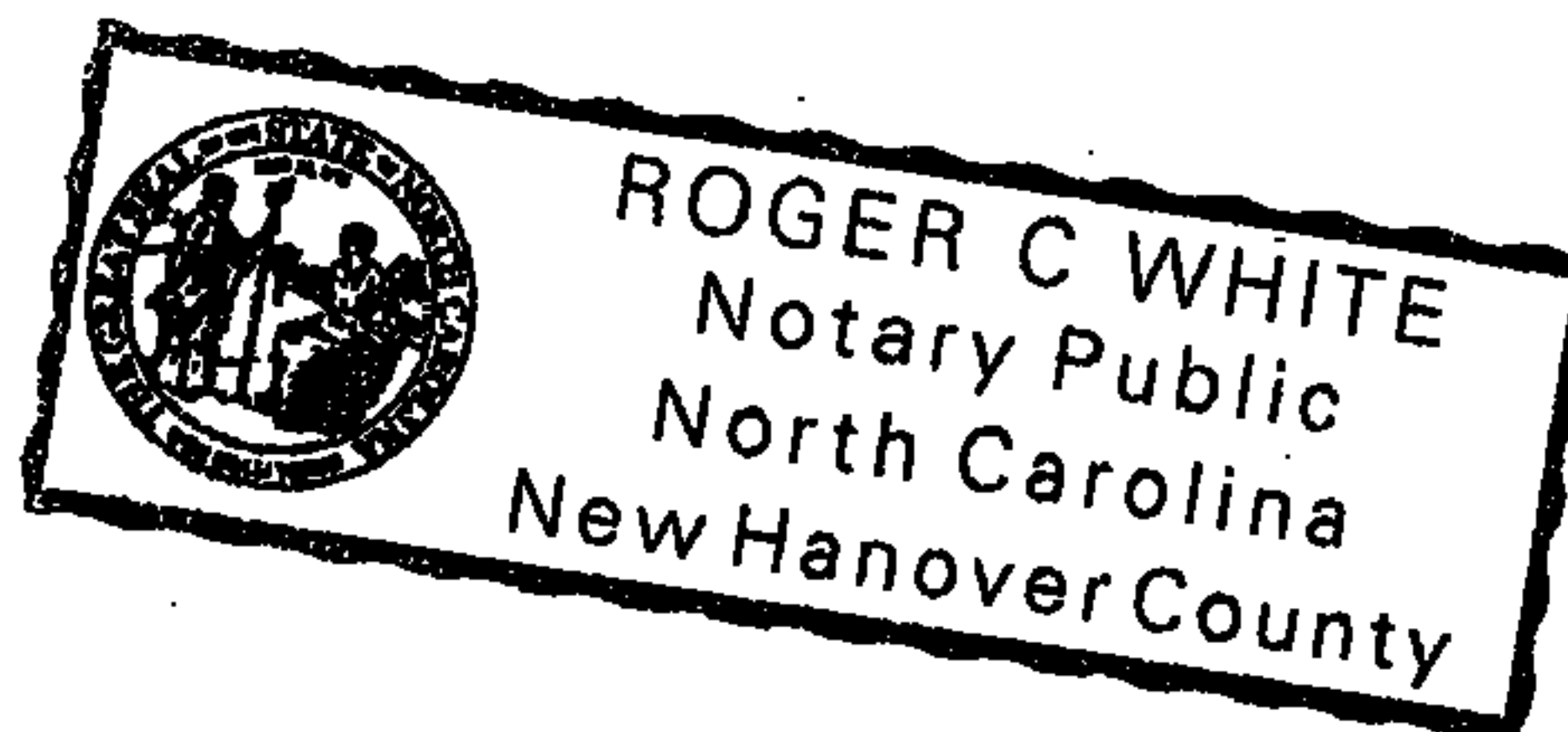


EXHIBIT A: DESCRIPTION OF REAL ESTATE

ALL AND SINGULAR, those certain pieces, parcels or lots of land located in Pender County, North Carolina, identified as 1 through 40, inclusive, Lot 87, Lots 92 through 95, inclusive, Open Space #1 (Mail Center), Open Space (Basin #2) and Open Space (Basin #3), and the private rights-of-way shown as "Laughing Gull Lane 40' Private R/W", "Porpoise Lane 40' Private R/W", "Planters Walk 40' Private R/W" and "Lookout Point 40' Private R/W" on that certain map or plat entitled "East Wynd Subdivision Phase 1, Topsail Township, Pender County, North Carolina", prepared by Michael Lee Tackett, Professional Land Surveyor, dated March 18, 2024, and recorded March 25, 2024, in Map Book 74 at Pages 53-55, Register of Deeds of Pender County, North Carolina.

EXHIBIT B: ARTICLES OF INCORPORATION

(See attached)



NORTH CAROLINA

Department of the Secretary of State

To all whom these presents shall come, Greetings:

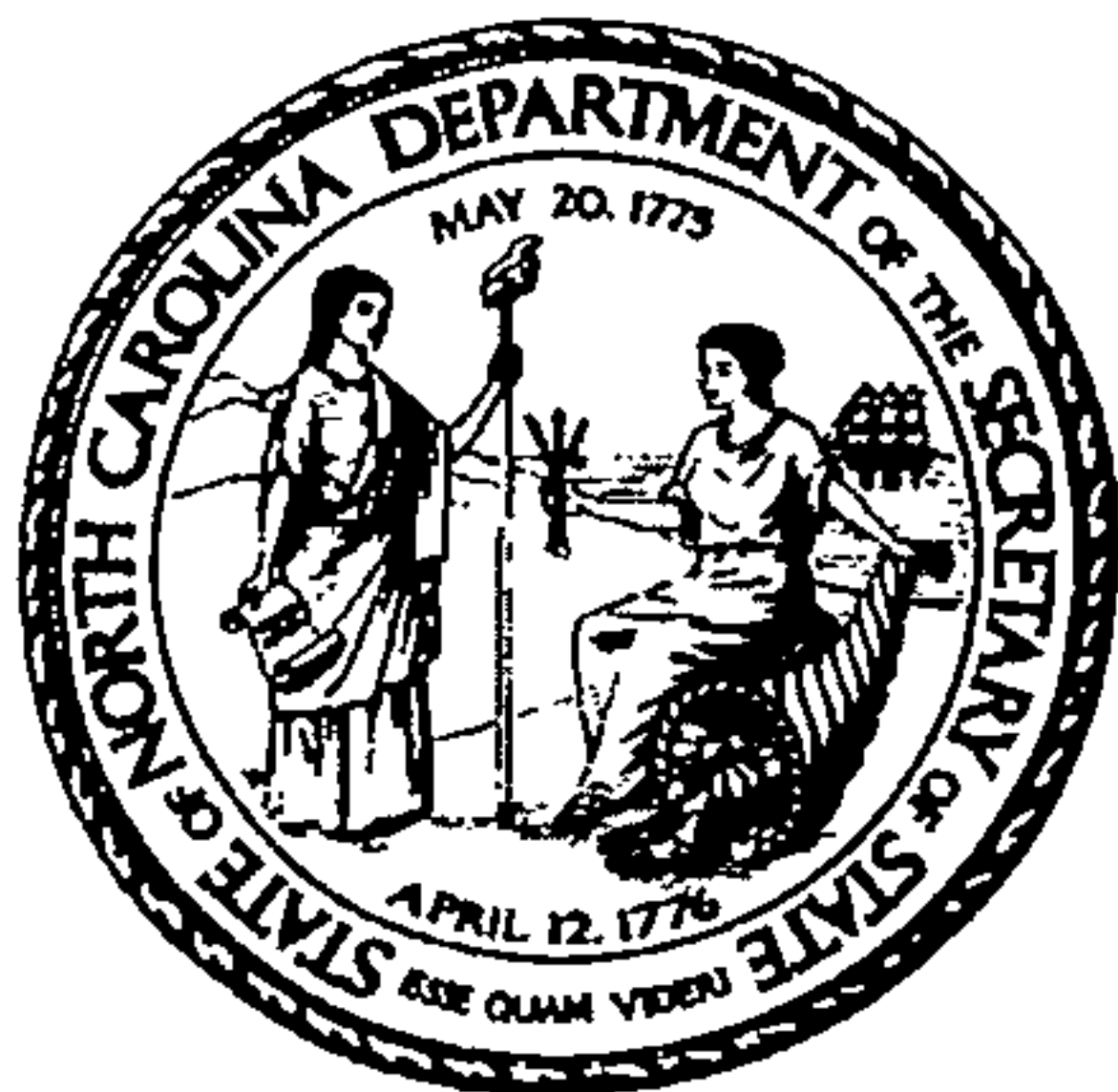
I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF INCORPORATION

OF

EAST WYND HOMEOWNERS' ASSOCIATION, INC.

the original of which was filed in this office on the 16th day of February, 2024.



Scan to verify online.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 16th day of February, 2024.

Elaine F. Marshall

Secretary of State

SOSID: 2791325
Date Filed: 2/16/2024 9:09:00 AM
Elaine F. Marshall
North Carolina Secretary of State
C2024 044 03372

State of North Carolina
Department of the Secretary of State

ARTICLES OF INCORPORATION
NONPROFIT CORPORATION

Pursuant to §55A-2-02 of the General Statutes of North Carolina, the undersigned corporation does hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

1. The name of the nonprofit corporation is: East Wynd Homeowners' Association, Inc.
2. ☐ (Check only if applicable.) The corporation is a charitable or religious corporation as defined in NCGS §55A-1-40(4).
3. The name of the initial registered agent is: Signature Top Sail NC Limited
4. The street address and county of the initial registered agent's office of the corporation is:
Number and Street: 6450 Shinnwood Rd
City: Wilmington State: NC Zip Code: 28409-2117 County: New Hanover
The mailing address *if different from the street address* of the initial registered agent's office is:
Number and Street or PO Box: _____
City: _____ State: NC Zip Code: _____ County: _____
5. The name and address of each incorporator is as follows:
- | Name | Address |
|-------------------|--|
| <u>Kara Keith</u> | <u>1000 29th Ave N Myrtle Beach SC, 29577-3171 United States</u> |
| _____ | _____ |
| _____ | _____ |
6. (Check either "a" or "b" below.)
- a. ☒ The corporation will have members.
- b. ☐ The corporation will not have members.
7. ☒ Attached are provisions regarding the distribution of the corporation's assets upon its dissolution.
8. ☐ Attached are provisions regarding the limitation of activities of the corporation.

9. Any other provisions which the corporation elects to include are attached.

10. The street address and county of the principal office of the corporation is:

Principal Office Telephone Number: (713) 789-0466

Number and Street: 6450 Shinnwood Rd

City: Wilmington State: NC Zip Code: 28409-2117 County: New Hanover

The mailing address *if different from the street address* of the principal office is:

Number and Street or PO Box: _____

City: _____ State: _____ Zip Code: _____ County: _____

11. Principal Office Email Address: Privacy Redaction

12. (Optional): Listing of Officers (See instructions for why this is important)

Name	Address	Title

13. (Optional): Please provide a business e-mail address: Privacy Redaction

The Secretary of State's Office will e-mail the business automatically at the address provided at no charge when a document is filed. The e-mail provided will not be viewable on the website. For more information on why this service is being offered, please see the instructions for this document.

14. These articles will be effective upon filing, unless a future time and/or date is specified: _____

This is the 13th day of February, 2024.

Incorporator Business Entity Name

Kara Keith

Signature of Incorporator

Kara Keith Incorporator

Type or print Incorporator's name and title, if any

NOTES:

1. Filing fee is \$60. This document must be filed with the Secretary of State.

BUSINESS REGISTRATION DIVISION
(Revised August, 2017)

P. O. BOX 29622

RALEIGH, NC 27626-0622
Form N-01

Item 7: The Dissolution Clause

Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

Attachment to
Articles of Incorporation of
East Wynd Homeowners' Association, Inc.
Provision for Dissolution

Upon dissolution of the corporation, other than incident to a merger or consolidation, after all liabilities and obligations of the corporation have been paid, or adequate provision made therefore, then (a) assets held upon special condition shall be disposed of in accordance therewith; and (b) other assets shall be distributed in accordance with the corporation's plan of distribution pursuant to Section 55-A-14-03 of the North Carolina General Statutes.

EXHIBIT C: BY-LAWS OF EAST WYND HOMEOWNERS' ASSOCIATION, INC.**ARTICLE I: NAME, PRINCIPAL OFFICE AND DEFINITIONS**

Section 1. Name. The name of the Association shall be East Wynd Homeowners' Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association in the State of North Carolina shall be located in the County of Pender. The Association may have such other offices, either within or without the State of North Carolina as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in that Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for East Wynd (as amended, renewed or extended from time to time, and hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.

Section 4. Purpose. The purpose of the Association is to manage the affairs East Wynd, a Community established pursuant to the terms of the Declaration therefor, filed or to be filed in the Office of the Register of Deeds for Pender County, North Carolina.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any member or individual person, firm or corporation.

The Association shall have all of the common law and statutory powers of a nonprofit corporation. The Association shall also have all of the powers necessary to implement the purposes of the Association and to provide for the general health and welfare of its membership.

ARTICLE II: ASSOCIATION – MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

Section 1. Membership. The Association shall have three (3) class of membership, Class A, Class B and Class C as more fully set forth in Article IV, Section 5 of the Declaration.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Voting Members as may be designated by the Board of Directors either within the properties or as convenient thereto as possible and practical.

Section 3. Annual Meetings. The first meeting of the membership, whether a regular or special meeting, shall be held within ninety (90) days after the expiration of one (1) year from the date of incorporation of the Association. The next annual meeting shall be set by the Board so as to occur no more than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the membership shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting shall be held at a date and time as set by the Board of Directors.

Section 4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Voting Members representing at least sixty (60%) percent of the total votes of the Association.

Section 5. Notice of Meetings. Written or printed notice stating the time and place of any meeting shall be delivered to each Voting Member entitled to vote at such meeting. Notice shall be either (1) hand-delivered, (2) sent prepaid by United States mail, or (3) sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the Voting Member, not less than ten (10) nor more than sixty (60) days in advance before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the Association's records, with postage prepaid. Notice given electronically shall be deemed to be delivered when dispatched, unless an error message is reported back to the sending system.

Section 6. Waiver of Notice. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member or alternate shall be deemed waiver by such Voting Member of notice of the time, date and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 7. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting, either in person or by alternate, may adjourn the meeting to a time not more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. The required quorum at the reconvened meeting shall be one-half of the required quorum at the preceding meeting.

If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

Section 8. Voting. The voting rights of the Members shall be as set forth in the Articles of Incorporation, and such voting rights provisions are specifically incorporated herein.

Section 9. Proxies. Voting Members may vote in person or by proxy.

Section 10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners or other group as the context may indicate, totaling more than fifty (50%) percent of the total number.

Section 11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by alternate of the Voting Members representing fifty-one (51%) percent of the total vote of the Association shall constitute a quorum at all meetings of the Association. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Any provision in the Declaration concerning quorums is specifically incorporated herein. So long as a quorum is present at the opening of the meeting, business may be transacted until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum in attendance. Further, at any adjourned meeting at which a quorum is present at the reconvening of such meeting, any business may be transacted which might have been transacted at the original meeting notwithstanding the withdrawal of enough members to leave less than a quorum in attendance.

Section 12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 13. Action Without a Meeting. Any action required by law to be taken at a meeting of the Voting Members, or any action which may be taken at a meeting of the Voting Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Voting Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Voting Members.

Section 14. Electronic Voting. Notwithstanding anything to the contrary in the Declaration or these By-Laws, Voting Members and the Class B Member shall be permitted to vote entirely by electronic means if the Board has made available a facility for such electronic voting.

ARTICLE III: BOARD OF DIRECTORS NUMBERS, POWERS, MEETINGS

A. Composition and Selection.

Section 1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors each of whom shall have one (1) vote. Except as provided in Section 2 of this Article, the Directors shall be Members. In the case of an Owner which is a corporation or partnership, the person designated in writing to the Secretary of the Association as the representative of such corporation or partnership shall be eligible to serve as a Director. The initial Board of Directors shall consist of three (3) persons, but may be increased by Declarant at any time during the Class B control period to five (5) persons. The names and addresses of the first Board of Directors of the Association, who shall hold office until the first annual meeting of members and until qualified successors are duly elected and have taken office, shall be as follows:

President	Mike Pollak	9337B Katy Freeway #377 Houston, TX. 77024
Vice President	David Greer	9337B Katy Freeway #377 Houston, TX. 77024
Secretary/Treasurer	Jennifer Evans	9337B Katy Freeway #377 Houston, TX. 77024

Exhibit C

Section 2. Directors During Class B Control. The Directors who shall serve on the Board of Directors of the Association shall be selected by the Class B Member acting in its sole discretion and shall serve at the pleasure of the Class B Member until either the Director Election Special Meeting or the first annual meeting of the membership following termination of Class B control, all as more particularly described in Sections 5 and 6 of this Article III.

Within one hundred twenty (120) days after termination of Class B control, the Class B member shall call a meeting, as provided in Article II, Section 4, of these By-Laws for special meetings, to advise the membership of the termination of the Class "B" member's control or, in the alternative, shall notify each member by U. S. Mail that the Class B membership has terminated.

The Directors selected by the Class B member pursuant to this Section need not be Members as provided in Section 1 of this Article.

Section 3. Veto. This Section 3 may not be amended without the express, written consent of the Class B member, so long as the Class B membership exists. So long as the Class B membership exists, the Class B member shall have a veto power over all actions of the Board and any committee, as is more fully provided in this Section. This veto power shall be exercisable only by the Class B member, its successors, and assigns who specifically take this power in a recorded instrument. The veto power shall be as follows: No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

- a. The Class B member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meetings with Article III, Sections 10 and 11, of these By-Laws as to regular and special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and
- b. The Class B member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of the meeting relative to any prospective action, policy, or program to be implemented by the Board, any committee, or the Association. The Class B member and its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class B member shall have and is hereby granted a veto power over any such action, policy, or program authorized by any committee or the Board of Directors and to be taken by any committee or Board of the Association or any individual member of the Association if Board, committee, or Association approval is necessary for said action. This veto may be exercised by the Class B member, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. Any veto shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association.

Section 4. Number of Directors. The number of Directors in the Association shall not be less than three (3) nor more than five (5), as provided below. The initial Board shall consist of three (3) members as identified in the Articles of Incorporation.

Section 5. Nomination of Directors. Except with respect to Directors selected by the Class B Member, nominations for election to the Board of Directors shall be made by a nominating committee (the "Nominating Committee"). The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association.

Upon termination of the Class B Membership, the Board of Directors shall appoint the Nominating Committee and may either (i) call a Special Meeting of the Association pursuant to Article II, Section 4 of these Bylaws for the purpose of electing new Directors (the "Director Election Special Meeting"), or (ii) wait until the first annual meeting after termination of the Class B Membership to elect new Directors, provided that the Nominating Committee is appointed not less than thirty (30) days prior to applicable meeting and such appointment is announced at such meeting.

Except as otherwise provided herein, the Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Voting Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each such annual meeting. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Section 6. Election and Term of Office. Notwithstanding any other provision contained herein: At the Director Election Special Meeting or the first annual meeting after the termination of Class B control, as applicable, five (5) Directors shall be elected. Two (2) of the Directors, elected pursuant to this Section, shall be elected to serve for a term of three (3) years. Two (2) of the remaining Directors shall be elected to serve for a term of two (2) years, with the final Director elected to serve for a one (1) year term. Members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association. Directors may be elected to serve any number of consecutive terms. Each member elected thereafter shall be elected for a two (2) year term.

The Association shall publish the names and addresses of all officers and board members of the Association within thirty (30) days of their election.

Section 7. Removal of Directors and Vacancies. Any Director of the Association may be removed, with or without cause, by a vote of the Voting Members with a majority vote of the membership. Any Director whose removal is sought will be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall then and there be elected to fill the vacancy by the Voting Members responsible for such removal.

Any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment for more than thirty (30) days may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board. In the event of the death, disability, or resignation of a Director, a vacancy may be declared by the Board and it may appoint a successor. Any Director appointed by the Board shall serve for the remainder of the term such successor was appointed to fill.

Section 8. Voting Procedure for Directors. At any election of Directors to the Board of Directors, each Voting Member may cast, in respect to each vacancy, as many votes as he or she is entitled to exercise under the Articles of Incorporation. The candidates receiving the largest number of votes shall be elected.

B. Meetings.

Section 9. Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or by a majority of Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by telegram, charges prepaid. All such notices shall be given by use of the Director's telephone number or shall be sent to the Director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 12. Notice. Notices of Board of Directors meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) facsimile, computer, fiber optics or other electronic communication device, with confirmation of transmission. All such notices shall be given at the Director's telephone number, fax number, electronic mail number, or sent to the Director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices sent by personal delivery, telephone, or other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting.

Section 13. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 14. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting until such

time and place as they may determine. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 15. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by Members holding a majority of the total vote of the Association at a regular or special meeting of the Association; provided any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors.

Section 16. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

Section 17. Open Meetings. Subject to the provisions of Section 18 of this Article, all meetings of the Board shall be open to all Voting Members, but Voting Members other than Directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a Director. In such case, the President may limit the time any Voting Member may speak.

Section 18. Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

Section 19. Electronic Voting. Notwithstanding anything to the contrary in the Declaration or these By-Laws, the Board of Directors, Voting Members and the Class B Member shall be permitted to vote entirely by electronic means if the Board has made available a facility for such electronic voting.

C. Powers and Duties.

Section 19. Powers. Subject to the restrictions and limitations contained in the Declaration, the Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, the Board of Directors shall have the power and authority to act on all matters as are not provided for by the Declaration, Articles, or these By-Laws as directed exclusively by the Voting Members or the membership generally.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

- a. preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

- b. making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Lot's proportionate share of the Common Expenses shall be payable in equal monthly installments, or as determined by the Board of Directors;
- c. providing for the operation, care, upkeep, and maintenance of all of the Common Areas;
- d. designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- e. collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the Directors' best business judgment, in depositories other than banks;
- f. making and amending rules and regulations;
- g. opening of bank accounts on behalf of the Association and designating the signatories required;
- h. making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;
- i. enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- j. obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- k. paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;
- l. keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and Lenders, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting principles;
- m. making available to any prospective purchaser of a Lot, any Owner of a Lot, any first Lender, and the holders, insurers, and guarantors of a first Deed of Trust on any Lot, current

copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Lot, and all other books, records, and financial statements of the Association; and

- n. permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the properties.

Section 20. Management Agent.

- a. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 19 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.
- b. No management contract may have a term in excess of three (3) years and must permit termination by either party without cause and without termination fee or penalty on written notice of not less than sixty (60) days.

Section 21. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

- a. accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- b. accounting and controls shall conform to generally accepted accounting principles;
- c. cash accounts of the Association shall not be commingled with any other accounts;
- d. no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise unless it benefits the Association;
- e. any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;
- f. commencing at the end of the month in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:
 - i. an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
 - ii. a variance report reflecting the status of all Association ledger accounts in an "actual" versus "approved" budget format;
 - iii. a balance sheet as of the last day of the preceding period; and
 - iv. a delinquency report listing all Owners who are delinquent in paying the assessments at the time of the report and describing the status of any action to

collect such installments which remain delinquent (A monthly installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of each month unless otherwise determined by the Board of Directors); and

- g. an annual report as of the end of the fiscal year consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited, reviewed, or unaudited basis, as determined by the Board, by an independent certified public accountant for any fiscal year in which the gross income of the Association exceeds Fifty Thousand and No/100 (\$50,000.00) Dollars. If said report is not prepared by an independent certified public accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

Section 22. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Areas or for the purpose of funding budgetary shortfalls, without the approval of the membership; provided, however, the Board shall obtain Voting Member approval by majority vote for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year.

Section 23. Rights of the Association. With respect to the Common Areas, and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other Owners or residents associations, both within and without the properties. Such agreements shall require the consent of two-thirds (2/3) of all Directors of the Association.

The Association shall not be bound, either directly or indirectly, by any contract, lease, or other agreement (including any management contract) executed during the period of Class "II" control unless such contract, lease or other agreement contains a right of termination exercisable by either party without penalty at any time, with or without cause, upon not more than ninety (90) days' notice to the other party.

Notwithstanding anything to the contrary contained herein, the Association, through its Board of Directors, shall have the right to enter into a declaration of easement and covenant to share costs or similar arrangement whereby the Association assumes maintenance responsibility for property which it does not own, or grants easements to entities which are not Members, in consideration for payment by the Owner of such property or such nonmembers of all or a portion of the costs associated with such maintenance or use.

Section 24. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any occupant of a Lot violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

- a. Notice. Prior to imposition of any sanction hereunder, except the suspension of voting rights for nonpayment of assessments, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.
- b. Hearing. If a hearing is requested in a timely manner, the hearing before the Covenants Committee shall be held in executive session affording the Owner a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.
- c. Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.
- d. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

ARTICLE IV: OFFICERS

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the membership, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term. The names and addresses of the first Board of Directors of the Association, who shall hold

office until the first annual meeting of members and until qualified successors are duly elected and have taken office, shall be as follows:

President	Mike Pollak	9337B Katy Freeway #377 Houston, TX. 77024
Vice President	David Greer	9337B Katy Freeway #377Houston, TX. 77024
Secretary/Treasurer	Jennifer Evans	9337B Katy Freeway #377 Houston, TX. 77024

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have the responsibility for the preparation of the budget as provided for in the Declaration.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors. Provided however, agreements, contracts and checks may be executed by the Management Agent.

ARTICLE V: COMMITTEES

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors may appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and conduct all hearings held pursuant to Article III, Section 23 of these By-Laws.

ARTICLE VI: MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

- a. Inspection by Members and Lenders. The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Lender, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the properties as the Board shall prescribe.
- b. Rules for Inspection. The Board shall establish reasonable rules with respect to:
 - i. notice to be given to the custodian of the records;
 - ii. hours and days of the week when such an inspection may be made; and
 - iii. payment of the cost of reproducing copies of documents requested.
- c. Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

- a. if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member or Voting Member; or
- b. if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. Prior to the termination of the Declarant Control Period, Declarant may unilaterally amend these By-Laws at any time, and from time to time, if such amendment is necessary (i) to bring any provision into compliance with any applicable government statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Deed of Trust loans on the Lots. For so long as Declarant owns any Lot or Dwelling Unit (as defined in the Declaration) within the Property, Declarant

may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon the rights of the Members. Thereafter and otherwise, but subject to the provisions hereinafter provided, these By-Laws may be amended only by the affirmative vote (in person or by alternate) or written consent of Voting Members representing two-thirds (2/3) of the total votes of the Association, including two-thirds (2/3) of the votes of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Further, no amendment of any provision reserving a right specifically in favor of the Declarant may be amended without the Declarant's express consent. No amendment shall be effective until recorded in the public records of Pender County, North Carolina.

ARTICLE VII: LIABILITY AND INDEMNIFICATION

Section 1. Liability to the Association. No person shall be liable to the Association for any loss or damage suffered by the Association on account of any action taken or omitted to be taken by such person in good faith as a Director, officer, employee or agent of the Association if such person (i) exercised or used the same degree of care as an ordinary prudent person in a like position would use under similar circumstances; or (ii) took or omitted to take such action in reliance upon information, opinions, reports or statements, including financial statements and other financial data, in each case, prepared or presented by any officer, employee or committee of the Board of Directors of the Association, or legal counsel, public accountants or other professional persons engaged by the Association, but such person shall not be considered to be acting in good faith if such person has actual knowledge concerning the matter in questions that would cause such reliance to be unwarranted; or (iii) has not breached or failed to perform the duties of their position or office in compliance with the Act, Articles of the Association and By-Laws of the Association in a manner constituting willful misconduct or recklessness.

Section 2. Indemnification. Subject to North Carolina law, the Association shall indemnify any Director or officer or former Director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, against expenses (including attorney's fees), judgment, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the defense of any action, suit, or proceeding, whether civil, administrative, or investigative, in which he was, is made, or is threatened to be made a party by reason of being or having been a Director or officer or former Director or officer of the Association, or serving or having served at its request as a director or officer of another corporation, except in relation to matters as to which the person's acts or omissions are adjudged in the action, suit, or proceeding to be a breach of the person's duty to the Association. Such duty to the Association shall be to discharge the duties of the office in a manner that does not constitute willful misconduct or recklessness in the exercise of good faith and reasonable belief that the action or actions were in or not opposed to the best interest of the Association. The termination of any action, suit, or proceeding by adverse judgment, order, or settlement (whether with or without court approval) shall not, alone, create a presumption that the Director or officer or former Director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, did not properly discharge his duty to the Association. If several claims, issues, or matters are involved, a Director or officer or former Director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, may be entitled to indemnification concerning some matters even though indemnification may or may not be given concerning other matters. Any Director or officer serving in any capacity for another corporation, who were it not for the influence or vote of the Association would not be so serving, shall be deemed to be serving at the request of the Association. In addition:

- a. To the extent that an individual has been successful on the merits or otherwise in the defense of any action, suit, or proceeding referred to in this Section 2, or in the defense of any claim, issue or matter therein, the individual shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred in connection therewith.
- b. Any indemnification, against underlying liability, provided for in this Section 2 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of any Director or officer or former Director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 1. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; (b) if such an independent quorum is not obtainable, by majority vote of a committee duly designated by the full Board of Directors (in which designation directors who are parties may participate), consisting solely of two (2) or more directors not at the time parties to the proceeding; (c) by special legal counsel (1) selected by the independent quorum of the Board of Directors (or the independent committee thereof if no such quorum can be obtained), or (2) if no such independent quorum or committee thereof can be obtained, selected by majority vote of the full Board of Directors (in which selection directors who are parties may participate); or (d) by the Members, who are not directors who are at the time parties to the proceeding. Notwithstanding the foregoing, any Director or officer or former Director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, shall be able to contest any determination that he or she has not met the applicable standard of conduct, by petitioning a court of appropriate jurisdiction.
- c. Expenses incurred in defending any action, suit, or proceeding, whether civil, administrative, or investigative, may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of a written undertaking by or on behalf of any Director or officer or former Director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, to repay the amount paid by the Association if it shall ultimately be determined that he or she is not entitled to indemnification as provided in the Articles of Incorporation. No advance shall be given if the Association has completed the determination of conduct procedure as provided for in Section 2(b) and it is determined that the individual will be precluded from indemnification.
- d. The indemnification provided by this Section 2 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any By-Laws, agreement, vote of members or disinterested Directors, as a matter of law, or otherwise, both as to actions in the officer's or director's official capacity and as to actions in another capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.
- e. The indemnification and advancement of expenses provided by, or granted pursuant to the Articles of Incorporation shall vest at the time of occurrence or performance of any event, act or omission giving rise to any action, suit or proceeding of the nature referred to in these Articles and, once vested, shall not later be impaired as a result of any amendment, repeal, alteration or other modification of any or all of these provisions.

IN WITNESS WHEREOF, the undersigned East Wynd Homeowners' Association, Inc. has caused this instrument to be executed to be effective as of April 15, 2024.

EAST WYND HOMEOWNERS' ASSOCIATION, INC.

By: Jennifer Pollak Evans
Name: Jennifer Pollak Evans
Its: Secretary