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**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS,  
RESTRICTIONS, CHARGES, LIENS, AND RESERVATIONS**  
***Shepherd Trail***

**THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RESTRICTIONS, CHARGES, LIENS AND RESERVATIONS** made this 4<sup>th</sup> day of April, 2018, by Shepherd's Ridge Development, LLC, a NC limited liability company (hereinafter referred to as "Declarant"), its successors and assigns concerning the planned community to be known as **Shepherd Trail**.

**WITNESSETH**

**WHEREAS**, it is the intent of the Declarant to establish a general plan and uniform scheme of development and improvement of property it owns or will acquire as a planned residential community (the "Planned Community") together with streets, roads, footways, open spaces, entrances, drainage facilities, access easements, site lighting and signage, and any recreational area(s), common area(s) and any other common properties shown on any recorded plat of such real property of a portion thereof for the benefit of the Planned Community; and,

**WHEREAS**, Declarant desires to insure the attractiveness of the Planned Community and to prevent any future impairment thereof, to provide for the maintenance and upkeep of the Common Elements, as hereinafter defined, to prevent nuisances, to preserve, protect and enhance the Common Elements of the project; and to this end desires to subject the real property described herein, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges, liens, reservations and other provisions hereafter set forth, each and all of which is and are for the benefit of the Planned Community and each property owner within the Planned Community; and

**WHEREAS**, Declarant has deemed it desirable, for the efficient preservation, protection and enhancement of the property values, amenities and opportunities within the Planned Community in order to contribute to the personal and general health, safety and welfare of the property owners and residents therein, to provide for the maintenance of all Common Elements, to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Common Elements and administering and enforcing this Declaration, and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, Declarant has caused to be incorporated under North Carolina Shepherd Trail Property Owners Association, Inc. (the "Association") as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions, and as more specifically provided herein;

**NOW, THEREFORE**, Declarant hereby declares that it is the expressed purpose, desire and intention of Declarant and Declarant hereby does submit the Existing Property (as herein defined), including any improvements to be located thereon, so that the Existing Property shall be held, sold, conveyed and occupied subject to the provisions, covenants, conditions and restrictions contained herein, which shall run with the real property and be binding on all parties having any right, title or interest in the Existing Property or any part thereof, and their heirs, administrators, successors and assigns, and shall inure to the benefit of each owner thereof.

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**ARTICLE 1**  
**DEFINITIONS**

The following words and terms when used in this Declaration and Bylaws and any supplemental declaration and Bylaws (unless the context shall clearly indicate otherwise) shall have the following meanings:

- 1.1 Assessments.** "Assessments" means the same as Common Expenses levied by the Association, as more specifically provided in Article 6.
- 1.2 Association.** "Association" means Shepherd Trail Property Owners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.
- 1.3 Bylaws.** "Bylaws" means such governing regulations as are adopted for the regulation and management of the Association, including such amendments thereof as may be adopted from time to time and recorded. The initial Bylaws are attached hereto as Schedule A.
- 1.4 Board.** "Board" means a board of natural individuals of the number stated in the Bylaws, who need not be Owners, which constitute the Board of Directors of the Association and who shall manage the business, operations and affairs of the Association on behalf of the Members.
- 1.5 Common Elements.** "Common Elements" means the common areas and facilities owned by the Association and dedicated to the common use and enjoyment of the Owners, or such other easements and areas for which the Association has maintenance responsibility, as more specifically provided in Article 7.
- 1.6 Common Expenses.** "Common Expenses" means the expenses of the Association in providing for the acquisition, construction, management, maintenance and care of Association Property, the Common Elements and the Association's maintenance obligations as more particularly provided in Article 6.
- 1.7 Declarant.** "Declarant" means Shepherds Ridge Development, LLC, and its successors and assigns in interest in Shepherds Trail, if such successor or assign should acquire more than one undeveloped Homesite from the Declarant for the purpose of development, and Shepherds Ridge Development, LLC affirmatively assigns in the conveyance to the acquirer of the undeveloped Homesites some, or all, of the Declarant's rights as a Declarant.
- 1.8 Declarant Control Period.** "Declarant Control Period" means that period of time that Declarant may appoint and remove a majority of the Board of Directors of the Association without consent of any Owner; which shall extend so long as Declarant owns any Lot in the Development Area; or, by voluntary relinquishment or assignment, whichever event shall first occur.
- 1.9 Declaration.** "Declaration" means this instrument and any amendments thereto by which the Planned Community is created and expanded.
- 1.10 Development Area.** "Development Area" means that property owned by Declarant known as Lot 17R as shown on the plat thereof recorded in Plat Cabinet 17, Slide 248, in the Office of the Register of Deeds of County, North Carolina; or, any other tract(s) or parcel(s) that are contiguous to the Development Area and which may be subsequently acquired by the Declarant.
- 1.11 Development Rights.** "Development rights" means any right or combination of rights reserved by the Declarant in this Declaration (i) to add real estate to the Planned Community; (ii) to create lots, Common Elements, or Limited Common Elements within the Planned Community; (iii) to subdivide

Homesites or convert Homesites into Common Elements; (iv) to withdraw real estate from The Planned Community; or (v) to sell and grant utility easements on over and under the open space or common elements to serve other parcels of land not within the Property or Planned Community and to receive and retain all revenue from said sales of easements.

**1.12 Dispose or Disposition.** "Dispose "or" disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a Homesite, but does not include the transfer or release of a security interest.

**1.13 Development Parcel(s).** "Development Parcel(s)" means those unimproved parcels or tracts of land conveyed by the Declarant to third parties under this Declaration permitting the division of such parcel or tract into smaller land units as Homesites or Residence Units or for development as a Cluster Residential Tract. Any such conveyance shall contain a reference to this subsection.

**1.14 Drainage.** "Drainage" means the removal of surface water or ground water from land by drains, grading or other means, and includes control of runoff to minimize erosion and sedimentation during and after construction or development and likewise includes undertaking those measures necessary for water supply preservation for prevention or alleviation of flooding.

**1.15 Foreclosure.** "Foreclosure" means the exercise of the rights of the holder of any mortgage or other instrument creating a security interest in a Homesite or Residence Unit.

**1.16 Homesite(s).** "Homesites(s)" means any unimproved plot of land designated with an Identifying Number upon any recorded subdivision map of a portion of The Planned Community. A Homesite shall be intended for use as the site for one (1) single family detached dwelling unit. A Homesite shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently completed to reasonably permit habitation thereof and will thereafter be subject to assessments as improved property as a Residence Unit.

**1.17 Identifying Number.** "Identifying number" means a symbol on the recorded plat of any phase of the Property that identifies only one Homesite in The Planned Community.

**1.18 Improvements.** "Improvements" means all structures or construction of any kind that alters the initial physical appearance of a Homesite , including, without limitation, any building, outbuildings, roads, driveways, parking areas, retaining walls, loading areas, utilities, lawns, fence, wall, sign, paving, grading, parking and building additions, alteration, screen enclosure, pool ,sewer, drain, disposal system, decorative building, landscaping or landscape device(including existing and planted trees and shrubbery) or object together with any construction work or treatment done or applied to a Homesite in connection therewith.

**1.19 Lease.** "Lease" means all leases, subleases and rental contracts, whether oral or written.

**1.20 Limited Common Element.** "Limited common element" means a portion of the Property allocated by the Declaration for the exclusive use of one or more but fewer than all of the Homesites. There are no Limited Common Elements in the Existing Property. It is anticipated that the future development of new Regimes may allocate Limited Common Elements as part of a Supplemental Declaration affecting Development Parcels.

**1.21 Majority.** "Majority" means any number of votes which is greater than fifty percent (50%) of the applicable votes.

**1.22 Master Plan or Development Plan.** "Master Plan" or "Development Plan" means the drawings which represent the conceptual research plan for the future development of The Planned Community, held by the Declarant and made available for inspection by prospective land purchasers. Since the concept of the future development of the developed and undeveloped portions of The Planned Community retained by, and remaining in the Declarant's ownership, is subject to continuing revision and change at the discretion of the Declarant, present and future references to the "Master Plan" by the Declarant, its employees or agents shall be reference to the latest revision thereof. In addition, no implied reciprocal covenants shall arise with respect to lands which have been retained by the Declarant for future development restricting their uses. The Declarant shall not be bound by any development plan, use or restriction of use shown on any Master Plan, and may at any time change or revise said Master Plan. None of the proposed facilities reflected on any Master Plan need be built. The

final development plan and the construction of any proposed facilities is dependent on market conditions and the economic viability of the sale of Homesites in The Planned Community.

**1.23 Member.** "Member" means every person or entity who holds membership in the Association. Declarant shall be a Member of the Association from and after the date of recordation of this Declaration.

**1.24 Mortgage.** "Mortgage" includes both a deed of trust or a mortgage or any instrument creating a security interest in a Homesite or Residence Unit.

**1.25 Mortgagee.** "Mortgagee" includes any grantee in or holder of a Mortgage, or the beneficiary of a Deed of Trust, or other similar security interest.

**1.26 Occupant.** "Occupant" means any person who occupies, or who has the right to occupy, all or a part of any Homesite or Residence Unit which is a part of the Property, whether such occupancy or right of occupancy is based on ownership, lease, license or easement.

**1.27 Offensive or Noxious Activity.** "Offensive or Noxious" activity or behavior includes but not be limited to a public nuisance or nuisance per se and shall also include any behavior or activity which is inconsistent with both the pleasurable use of The Planned Community by a majority of the residents and their reasonable expectations of enjoying their property and the available amenities and natural surroundings free of boorish, rude, excessively noisy, crude, tasteless behavior, flashing lights, racing vehicles, radio, hi-fi or electronic music distractions, etc., or other similar behavior curtailing the pleasure of use of the natural environment and Common Elements of The Planned Community. Musical or other entertainment, concerts, festivals, competitions or shows conducted under permit from the Declarant shall not constitute offensive or noxious activity or behavior unless such permit is withdrawn by the Declarant.

**1.28 Owner or Unit Owner.** The term "Owner" or "Unit Owner" means a person who has acquired by disposition fee simple title to any Homesite, but shall not include a person having such an interest merely as security for the performance of an obligation. The Declarant and any mortgagee is excluded from being an "Owner" unless and until such Declarant and mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

**1.29 Person.** "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

**1.30 Planned Community.** "Planned Community" means real estate with respect to which any person, by virtue of his ownership of a Homesite, is expressly obligated by this Declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve or benefit other Homesites or other real estate described in this Declaration. The term Planned Community is used interchangeably with the term Shepherds Trail within this Declaration.

**1.31 Property.** "Property" means the Existing Property as defined in Article 2.1 and any additions or replacements that may be brought by the Declarant, at its option, within the scheme and jurisdiction of this Declaration, including the Homesites and the Common Elements, together with the buildings and all other improvements thereon, and all easements and rights appurtenant thereto, which are now or hereafter used in connection with the ownership and use of said land and improvements.

**1.32 Recorded.** "Recorded" means made a matter of public record by filing same in the Office of the Register of Deeds or Clerk of Court for Moore County, North Carolina, the filing place to be determined by the type of document to be recorded.

**1.33 Regime.** "Regime" means a section or portion of the Property brought within the scheme of this Declaration for the purposes of levying assessment upon the Homesites and Owners. The Property within a Regime shall consist of Homesites, together with any Limited Common Elements, which have similar characteristics and expenses for maintenance and operation. All Owners of Homesites within a specific type of Regime, as designated by Declarant, shall be assessed the same annual amount for assessment established pursuant to the provisions herein. Different Regimes may, however, at Declarant's sole discretion, have different assessments due to the presence of Limited Common Elements within that Regime.

**1.34 Residence Unit.** "Residence Unit" means the improvements erected on a Homesite for use and occupancy as one single family dwelling and any exterior steps, garage, parking space, patio, deck, driveway, balcony, storage facilities, terraces, verandas and landscaping located on the Homesite, and the Homesite upon which said building and improvements are located.

**1.35 Security Expenses.** "Security Expenses" means all fees and expenses incurred by the Association for any security purpose associated with the Planned Community, including but not limited to erection, purchase and maintenance of gates, perimeter fencing, vehicles, equipment, personnel or contracts with providers of such services, equipment and facilities.

**1.36 Shall.** "Shall" indicates a mandatory requirement, condition, or obligation; in contrast, the term "may" indicates a permissive action.

**1.37 Special Declarant Rights.** "Special Declarant Rights" means rights reserved for the benefit of the Declarant which may not be altered by the Members, including, but not limited to rights (i) to complete improvements indicated on plats and plans filed with the Declaration; (ii) to exercise any Development Right; (iii) to maintain sales offices, management offices, signs advertising The Planned Community, and models; (iv) to use easements through the common elements for the purpose of making improvements within The Planned Community or within real estate which may be added to The Planned Community; (v) to have access over, upon and through the Development Area to any unsold Lots or undeveloped areas within the Planned Community or property owned by the Declarant adjacent thereto, (vi) to appoint or remove any officers or executive board members of the Association during the period of declarant control, all of which Special Declarant Rights are more fully set forth herein.

**1.38 Structure.** "Structure" means any construction, object, projection or piece of work artificially built up or composed of parts joined together in some definite manner, which is erected or shaped on the Property, including but not limited to buildings, fences, walls, bridges, signs, blinds, tennis courts, swimming pools, tents, gazebos, greenhouses, garage facilities or other outbuildings, signs, abutments, ornamental projections, exterior fixtures, shaped earth as a masonry structure, lights, or any device which might obstruct or interfere with the quality of a view from the property.

**1.39 Use of Land or Intended for Use.** "Use of Land" or "Intended for Use" means the use designated in the deed of conveyance of a parcel or space or by separate declaration of covenants designating the use for which any particular parcel of land is restricted to in such declaration incorporated by reference to a particular recorded declaration of covenants in deeds by which the Declarant has conveyed such land. Reference to "uses" of land, or description of parcels on maps, master plans, and promotional material shall not constitute a designation of use for purposes of this Declaration nor shall such reference create any obligation for the Declarant.

**1.40 Use or Used for Residential Purposes.** "Use or Used for Residential Purposes" means to be used as one's residence or normal and customary place of abode and shall not include any use for business or commercial purposes. The use of a portion a Residence Unit as a home office shall be considered a residential use: (1) if such use does not create more than very occasional customer or client traffic to and from the Residence Unit and is otherwise permitted by any applicable Zoning Ordinance; (2) if the Residence Unit's address is not held out or advertised in any way as a business address; (3) no sign, symbol, logo, or name plate identifying such business is affixed to the exterior of the Residence Unit or visible from the exterior of the Residence Unit; and (4) except where the approval of the Association has been given to such use.

**1.41 Utility Area.** "Utility Area" means those tracts or parcels of the properties set aside by Declarant, at its sole option, for maintenance buildings, and the installation of utility systems to serve the remainder of the Property. Utility systems shall include, but not be limited to, water, sewer, telephone, electricity, cable and gas. The Utility Areas may be conveyed by Declarant to a municipality or to public or private utility companies that operate and maintain such systems. Utility Areas shall be accessible by easements of ingress, egress and regress reserved herein over the Property if not located on a public or private street. At the option of the Declarant, any or all of a Homesite may be used as a Utility Area.

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**ARTICLE 2****PROPERTY SUBJECT TO DECLARATION**

**2.1 Existing Property.** The Property which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied under this Declaration and within the jurisdiction of the Association, is located in the Town of Aberdeen, Moore County, North Carolina, and is more particularly described as Shepherds Trail, Phase One, as shown on plat thereof recorded in the Office of the Register of Deeds of Moore County, North Carolina in Plat Cabinet 17, Slide 596.

**2.2 Additions to Existing Property.** Additional land within the Development Area of any tract that Declarant may acquire that is contiguous to the Development Area may be brought within the scheme and operation of this Declaration and the Jurisdiction of the Association by the Declarant without the consent of the Association or any Member in the following manner: The area of the Property subject to this Declaration maybe increased by filing with the Register of Deeds of the jurisdiction referred to above, plats of additional phases within the Development Area and the subsequent conveyance of any Homesite by the Declarant in such phase by reference to such plat and this Declaration, which shall then extend the scheme of the Declaration to all property shown on the plat of that phase, except for any areas marked "Reserved" or such areas of similar nomenclature. No other land within the Development Area or vicinity of the Development Area shall be subject to this Declaration unless the provisions of this section are complied with, it being intended that this Declaration may not be construed or considered as a scheme for the development of any land other than that shown on the then existing and recorded plats for each phase by which at least one of the Homesites shown thereon has been conveyed by reference to such plat and this Declaration.

**2.3 Supplemental Declaration.** In addition the Declarant reserves the right to file Supplemental Declarations with the development of each successive phase, or as amendment to the Existing Property, which may contain such complementary additions and modifications of this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect and adapt to any difference in character of the those properties (for example, a Regime developed on a Cluster Residential Tract, or that includes Limited Common Elements), and as are not inconsistent with the scheme of this Declaration.

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**ARTICLE 3****USE OF PROPERTY**

**3.1 Use Restrictions.** The use of the Property, the Homesites, the Residence Units and Common Elements shall be in accordance with the following provisions as long as this Declaration remains in effect.

**3.1.1 Single Family Residence.** The Homesites and any building or structure now or hereafter erected on a Homesite shall be occupied and used for single family residence purposes only, and no building shall be erected, altered, placed or permitted to remain on any Homesite other than one single detached dwelling not exceeding three stories and an attic (finished or unfinished) in height, a basement (finished or unfinished), a garage for not more than three cars (which may include guest or employee quarters) and appropriate outbuildings incident to the single family residential use of the premises. No Residence Unit may be divided or subdivided into a smaller unit nor any portion thereof separately sold or otherwise transferred; provided that Homesites or portions thereof may be combined to form larger parcels than originally platted. Lease or rental to one or more tenants of a Residence Unit for residential purposes, subject to the other provisions of this Declaration, shall not be considered a violation of this covenant.

**3.1.2 Nuisances.** No nuisances shall be allowed upon any Homesite nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents. All parts of the Common Elements, and the Homesites or Residence Units shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate. No damage to or waste of the Common

Elements, or any part thereof, shall be committed by any Owner or his family, visitors, guests, servants, lessees, agents or invitees, and each Owner shall indemnify and hold the Association and the other Owners harmless against all losses resulting from any such damage or waste. No Homesite or Residence Unit Owner shall make or permit any use of his Homesite or Residence Unit, or make any use of the Common Elements, which will violate the provisions of the general documents or any insurance policy covering the Property.

**3.1.3 Lawful Use.** No immoral, improper, offensive or unlawful use shall be made of any part of the Property, and all applicable laws, zoning ordinances and regulations of all governmental bodies shall be observed. The expense of complying with any such laws, ordinances or regulations which compliance requires maintenance, modification or repair of the Common Elements shall be borne by the Association unless necessitated by the misuse, misconduct or neglect of a Homesite Owner or Residence Unit Owner, or his family, visitors, guests, servants, lessees, agents or invitees, in which case such expense shall be assessed against such Owner.

**3.1.4 Certain Structure Types Prohibited.** Mobile, Modular and Manufactured Homes are prohibited. In the event of any question as to whether a proposed structure may be considered a prohibited Mobile, Modular or Manufactured Home, the Declarant shall decide based on its sole discretion during the period of Declarant Control and thereafter the Board shall decide based on the existing standards for construction in the Declarant Policies and Procedures.

**3.1.5 Rules and Regulations.** Rules and regulations adopted by the Board shall be binding upon the Owners, their families, visitors, guests, servants, lessees, agents, invitees, successors and assigns.

**3.1.6 Fences, Walls and Landscaping.** No barbed wire, wire mesh, or chain link fences shall at any time be erected or maintained upon any Homesite. All fences, walls, hardscape, landscape, shall be constructed in accordance with a permit issued by the Town of Aberdeen and shall otherwise comply with all town ordinances and regulations.

**3.1.7 Parking Areas.** No Owner of a Homesite shall park, store or keep any motor vehicle, boat, trailer, recreational vehicle or other vehicle upon the Property except in accordance with rules and regulations adopted by the Association. No person shall repair or restore any motor vehicle, boat, trailer, recreational vehicle or other vehicle upon any portion of the Property or Common Elements except for emergency repairs thereto, and then only to the extent necessary to enable movement thereof to a proper facility.

**3.1.8 Waste Material Containers.** No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Homesite or the Common Elements except in sanitary containers located in appropriate areas and otherwise in accordance with rules and regulations adopted by the Association from time to time. No "hazardous substance" or "solid waste" as defined in any state or federal law shall be released, kept or maintained on any Homesite or portion of the Common Elements.

**3.1.9 Signs.** Unless prior written approval is obtained from the Association, no sign shall be posted on the Common Elements, or on any Homesite or Residence Unit or in any Residence Unit which will be visible from the exterior of such Unit unless temporary for sale sign.

**3.1.10 Offensive Trade or Activity.** No noxious or offensive trade or activity shall be carried on upon any building site, nor shall anything be done thereon which may be or cause an embarrassment, discomfort, annoyance or nuisance to the neighborhood. No trade materials or inventories may be stored upon the premises and no campers, recreational vehicle, motor home, trucks or trailers, boats or boat trailers may be stored or regularly parked on the premises unless garaged and out of view, without prior written approval of Declarant. Unless approved in writing by the Declarant, no business activity or trade of any kind whatsoever, which shall include but not be limited to the use of any residence as a doctor's office or professional office of any kind, shall be carried on upon any building site.

**3.1.11 No Temporary Structures.** No structure of temporary character, tent, shack, trailer, camper, garage, or any other outbuilding, except for temporary structures used by Declarant in

the operation, maintenance or development of the Property shall be used on any Homesite at any time as permanent or temporary residence, or dwelling, except under a temporary written permit which may be granted, upon specific time limitations of such use, in the discretion of the declarant. Nor shall any of the facilities referenced above be placed on or erected on any Homesite or Homesites; provided, however, that the Declarant may grant permission for such temporary buildings or structures for the storage for materials during construction by the persons doing such work.

**3.1.12 No Livestock.** No livestock of any description may be kept or permitted on the Property with the exception of dogs, cats, and other animals which are bona fide household pets, and which do not make objectionable noise or constitute a nuisance or inconvenience to Owners of other Homesites or Residence Units nearby. All pets shall be leashed when not on the Owner's Homesite, and shall otherwise be controlled by the Owner while on the Owner's Homesite such that the pet shall not have unrestrained access to property other than that of the Owner. Upon receipt of a written complaint regarding any dog, cat or pet, the Declarant may notify the Owner of such dog, cat or pet of the complaint and, after affording the Owner an opportunity to be heard, impose such restrictions upon the Owner regarding such dog, cat or pet as may be reasonably necessary to satisfy said complaint in the discretion of the Board. No raising, breeding, training or commercial dealing in dogs, cats or any other animals may be permitted on or from any Homesite or Residence Unit.

**3.1.13 Off-Street Parking.** Adequate off-street parking shall be provided by the Owner of each Homesite or Residence Unit being used as a building site and each Homesite or Residence Unit for the parking of automobiles owned by such Owner, or his guest. Owners of Homesites and Residence Units agree not to park their automobiles or other vehicles on the streets in the development. No boats, trailers, or recreational vehicles shall be regularly parked or stored on any street, or on any Homesite except in a garage. No commercial vehicles shall be parked on any street or Homesite longer than is reasonably necessary for the driver thereof to perform the business functions to which the commercial vehicle relates.

**3.1.14 Recreational Facilities.** No Homesite Owner or Residence Unit Owner in the development shall have any right to use any portion of the Common Elements comprised of recreational facilities unless the Homesite Owner or Residence Unit Owner has paid the applicable fees and assessments established by the Association.

**3.1.15 Refuse.** No Homesite shall be used or maintained as a dumping ground for rubbish, refuse or garbage. Garbage or other waste shall be kept in sanitary containers. All incinerators or other equipment for the disposal or storage of such matter shall be kept in a clean and sanitary condition, and all incinerators shall be approved by the Declarant before installation or use. Burning of trash or refuse is prohibited without prior approval of the Declarant and the fire department authorized to serve the premises. Fires on any Homesite or any portion of the Common Elements are prohibited unless approved by the Declarant. No hazardous substance, waste or other toxic material shall be dumped, buried, injected, treated or disposed of on any Homesite or any portion of the Common Elements.

**3.1.16 Antennas.** No television or radio antennae, satellite receiver or towers maybe erected or maintained anywhere upon the development without prior written consent of the Declarant upon such reasonable conditions as the Declarant may feel appropriate to minimize any visual impact of the structure to others.

**3.1.17 Wash.** All drying of wash must be done indoors or in an area screened from view from any other Homesite, Residence Unit, street or adjoining property not part of Shepherds Trail. No permanent exterior clothes dryer shall be erected, installed, or maintained on any Homesite, or on any Structures thereon. Only collapsible or retractable clothes dryers shall be used, and they shall be collapsed or retracted when not in use and shall be located in the rear yard behind any Residence Unit.

**3.1.18 Trees and Foliage.** Trees may be cleared from Lots only in accordance with Town of

Aberdeen ordinances and regulations

**3.1.19 No Site Obstructions.** No trees or shrubs shall be located on any Homesite which block the view of operators of motor vehicles so as to create a traffic hazard.

**3.1.20 Unsightly Conditions.** It is the responsibility of each Owner to prevent any unclean, unsightly, or unkept conditions of his Resident Unit or grounds on a Homesite of any owner which shall tend to materially decrease the beauty of the Planned Community. The Association shall have the option, but not the obligation to ameliorate any such condition and charge such expense to the Owner as an additional assessment immediately due and payable collectible under the provisions of Article 6.

**3.1.21 Discharge of Firearms.** Hunting and trapping of wild animals, fowl and game and discharge of firearms and/or bows and arrows within the property is prohibited unless required for public or private safety.

**3.1.22 Motorized Vehicles.** All motorized vehicles operating within the Property must be properly muffled so as to eliminate noise which might be offensive to others.

**3.1.23 Vegetation.** No existing vegetation or wetlands shall be disturbed during construction without the express written consent of the Declarant and any necessary approval from any governmental agency having jurisdiction. The Declarant shall require written proposals for the destabilization of any such disturbed area. Any vegetation disturbed during construction shall be restored to the satisfaction of the Declarant prior to Owner applying for an occupancy permit.

**3.1.24 Wetlands.** Any Homesites that include areas designated as "wetlands" on any recorded plat of the Property shall be subject to the following additional restrictive covenant: "A portion of this Homesite has been determined to meet requirements for the designation as a regulatory wetland. Any subsequent fill or alteration of this wetland shall conform to the requirements of state wetland rules adopted by the State of North Carolina in force at the time of the proposed alteration. The intent of this restriction is to prevent additional wetland fill, so the property owner should not assume that a future application for fill will be approved. The property owner shall report the name of the subdivision in any application pertaining to said wetland rules. This covenant is intended to insure continued compliance with wetland rules adopted by the State of North Carolina and therefore benefits may be enforced by the State of North Carolina. This covenant is to run with the land and shall be binding on all parties and all persons claiming under them.

**3.1.25 Additional Use Restrictions.** These Restrictions shall include architectural and landscaping restrictions which shall govern portions of the Property as provided in Article 4.

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#### ARTICLE 4

#### CONSTRUCTION ON HOMESITES / RESIDENCE UNITS ARCHITECTURAL AND LANDSCAPE CONTROLS

**4.1 Declarant.** It is the intent of Declarant to create a general plan and uniform scheme of development of the Property and to create within the Property a residential community of high quality and harmonious improvements. The Declarant desires to provide for the preservation of the property values in the Planned Community with respect to any Residence Unit to be constructed on any Homesite and to that end, desires to establish an Declarant in order to provide and maintain certain standards as to harmony of external design and location in relation to surrounding structures and topography. Accordingly, the Declarant (the "Declarant") shall have the absolute and exclusive right to approve or disapprove all architectural, landscaping and locating of any proposed improvements. The Declarant 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.

**4.2 Approval to Build.** The Owner of a Homesite may build a Residence Unit thereon, subject to the following terms, conditions and restrictions:

**4.2.1 Homesite Configuration.** No residence shall be constructed, altered, placed or

permitted to remain on any parcel in the Planned Community unless same is constructed upon a defined Homesite. The lay of the Homesites as shown on the recorded plat shall be adhered to; provided, however, Declarant and its successors and assigns, may revise and alter the following: (a) the configuration of Homesites so that additional streets or access easements, either public or private, may be opened through any Homesite, and (b) the size and shape of any Homesite may be altered, provided such reconfiguration applies with all applicable zoning and subdivision regulations. The Owner(s) of more than one (1) contiguous Homesite may apply to the Declarant for permission to use such properties as a site for a Single-Family Residence and upon the written consent of the Declarant, said contiguous parcels shall then be deemed to be a single "Homesite" for purposes of this Declaration, except that the Homesites shall continue to be treated as separate and distinct Homesites for purposes of voting and assessments. In the event of a split of a Homesite between two or more Owners of other Homesites, then they shall determine the allocation of the vote and assessment obligation between them and notify the Association. All setbacks and any reserved utility easements shall then apply to the new perimeter boundary of the combined Homesites.

**4.2.2 Applicable Laws and Declarant Policies.** A Homesite is subject to having constructed on it by its Owner a Residence Unit that meets the requirements of any applicable laws, ordinances, restrictions and covenants approved by the Declarant pursuant to the policies and procedures established by the Declarant as described in the Policies and Procedures. The Declarant, shall have the power to enforce this Article and the Policies and Procedures by any action, including any type of action in a court of law or equity.

**4.2.3 Plans and Specifications.** No building of any type, outside lighting, driveway, clearing or site work, outside trash receptacle, fence, wall, hedge or screen planting shall be erected, placed or altered on any premises in the Planned Community until the building plans, specifications and plot plans showing the location of such building, outside lighting, outside trash receptacle, wall, hedge, fence or screen planting have been approved in writing as to conformity and harmony of external design, and external materials with existing structures in the area and as to location with respect to topography, wetlands, and finished ground elevation, by the Declarant. No exposed concrete blocks shall be used above finished ground elevations unless said blocks are covered with brick veneer, stone, or stucco. No asbestos shingles or asbestos siding of any type or asphaltic covering shall be used on vertical exterior walls, unless approved by the Declarant. In the event said board fails to approve or disapprove such design or location within forty-five (45) days after such plans and specifications have been submitted to it, such approval will not be required, and this covenant will be deemed to have been fully complied with.

**4.2.4 Site Plans.** The Declarant shall approve the location of buildings and other improvements on all building sites in the Planned Community. Except with the prior written approval of the Declarant, no building shall be located on any building site outside the minimum building setback lines shown on any recorded map. No change in the natural drainage shall be made by any Homesite Owner without prior written approval from the Declarant.

**4.2.5 Square Footage of Residence Units.** No residential structure exceeding a total height of 35 feet and which has an area of less than 1,600 square feet of heated living space, exclusive of porches and garages, shall be erected or placed on any building site.

**4.3 Approvals.** The Declarant shall have the right to disapprove any plans, specifications or details submitted to it as aforesaid in the event such plans, specifications and details are (i) not in accordance with all of the provisions established in this Declaration and the Policies and Procedures established by the Declarant, (ii) if the design or color schemes of the proposed building or other structure is not in harmony with the general surroundings of such Homesite or within the adjacent buildings or structures, (iii) if the plans and specifications submitted are incomplete, or (iv) in the event

the Declarant deems the plans, specifications or details, or any part thereof, to be contrary to the interests, welfare or rights of all or any part of the Property or the Owners thereof, all in the sole discretion of the Declarant. The decisions of the Declarant shall be final, subject to the right of the Owner to appeal to the Board. Neither Declarant, the Declarant nor any agent thereof shall be responsible in any way for (I) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing, (ii) any structural or other defects in any work done according to such plans and specifications, or (iii) the enforcement of any municipal or governmental code, statute, law or ordinance.

**4.4 Building Permit.** No Owner shall obtain a building, permit from the applicable County or municipal agencies without first obtaining all necessary approvals from the Declarant as set forth in the Policies and Procedures.

**4.5 Time Period.** The work of constructing, altering or remodeling any building on any Homesite or Homesites shall be pursued diligently from the commencement until the completion thereof, and shall be completed within twelve (12) months from time of approval by the Declarant.

**4.6 Grading and Filling.** All planned Homesite grading shall be approved in advance by the Declarant. No Homesite may be filled to a point higher than the highest point on the Homesite in its natural state without permission from the Declarant. All Homesite fillings shall be approved in advance by the Declarant.

**4.7 Driveway Culverts.** Each Owner, if required by the Declarant in the approval of the plans process, when making a driveway connection to the street or to a cul-de-sac, will provide a suitable drainage culvert so as to allow for unimpeded water movement along the existing roadway swale, and will maintain that culvert at all times in such a way that it does not become an eyesore or disturb the desired drainage patterns in the swale system.

## 5

### ARTICLE 5

#### PROPERTY OWNERS ASSOCIATION

**5.1 Membership.** Every owner of a Homesite shall be a member of Shepherds Trail Property Owners Association, Inc., a non-profit corporation, created by the Declarant. Membership shall be appurtenant to and may not be separated from ownership of any Homesite. Each membership in the Association shall relate to and have a unity of interest with an individual Homesite which may not be separated from ownership of said Homesite.

**5.2 Powers of Association.** Subject to the provisions of this Declaration and the Articles of Incorporation, the Association may exercise all powers provided by NCGS §47F-3-102 of the North Carolina Planned Community Act, including but not limited to the following:

**5.2.1** adopt and amend Bylaws and rules and regulations;

**5.2.2** adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from owners;

**5.2.3** hire and discharge managing agents and other employees, agents, and independent contractors;

**5.2.4** institute, defend, or intervene in litigation or administrative proceedings on matters affecting the Planned Community;

**5.2.5** make contracts and incur liabilities;

**5.2.6** regulate the use, maintenance, repair, replacement, and modification of Common Elements;

**5.2.7** cause additional improvements to be made as a part of the common elements;

**5.2.8** acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to NCGS §47F-3-112;

**5.2.9** Except as otherwise provided for herein, grant easements, leases, licenses, and concessions through or over the Common Elements;

**5.2.10** Except as otherwise provided for herein, impose and receive any payments, fees, or

charges for the use, rental, or operation of the Common Elements other than the Limited Common Elements and for services provided to Owners;

**5.2.11** impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Homesites) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer;

**5.2.12** after notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the Association for reasonable periods for violations of the Declaration, Bylaws, and Rules and Regulations of the Association;

**5.2.13** impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the Declaration, or statements of unpaid assessments;

**5.2.14** provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;

**5.2.15** assign its right to future income, including the right to receive Common Expense assessments;

**5.2.16** exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and

**5.2.17** exercise any other powers necessary and proper for the governance and operation of the Association.

### **5.3 Procedures for Fines and Suspension of Planned Community Privileges or Services.**

A hearing shall be held before an adjudicatory panel appointed by the Board to determine, if any Owner should be fined, or if Planned Community privileges, including voting privileges, or services should be suspended. If the Board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the Board. The Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed the maximum then allowed under the Planned Community Act may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be assessments secured by liens under Article 6. If it is decided that a suspension of Planned Community privileges, including voting privileges, or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

### **5.4 Executive Board Members and Officers.**

Except as provided elsewhere in this Declaration, in the Bylaws, or in subsection 5.5, the executive board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the executive board shall be deemed to stand in a fiduciary relationship to the association and the lot owners and shall discharge their duties in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions.

**5.5 Executive Board Prohibitions.** The executive board may not act on behalf of the Association to amend the Declaration, except for any amendments that do not require Member approval; to terminate the Planned Community; or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term as provided in the Bylaws.

**5.6 Declarant's Control of Association.** Regardless of the time limitations of the Declarant Control Period, Declarant's vote shall be the vote of the membership and Declarant may appoint and remove all or any of the Board of Directors and all officers until such time as Declarant releases such right by notice in writing delivered to the Board of Directors of the Association.

**5.7 Voting.** The voting rights of the membership shall be appurtenant to the ownership of

the Homesites. Each Owner shall be entitled to one (1) vote for each Homesite owned. If only one of multiple owners of a Homesite is present at a meeting of the Association, that Owner is entitled to cast the vote allocated to that Homesite. If more than one of the multiple owners are present, the vote allocated to that Homesite may be cast only in accordance with the agreement of the majority in interest of the multiple owners. Majority agreement is conclusively presumed if any one of the multiple owners casts the vote allocated to that Homesite without protest being made promptly to the person presiding over the meeting by any of the other multiple Owners of the Homesite.

**5.8 Proxies.** The vote allocated to a Homesite may be cast pursuant to a proxy duly executed by a Homesite Owner. If a Homesite is owned by more than one person, each Owner of the Homesite may vote or register protest to the casting of votes by the other owners of the Homesite through a duly executed proxy. A Homesite Owner may not revoke a proxy given pursuant to this section except by written notice of revocation delivered to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates one year after its date, unless it specifies a shorter term.

**5.9 Amenities and Common Elements.** Every park, recreation area, recreation facility, dedicated access and other amenities appurtenant to the Planned Community, whether or not shown and delineated on any recorded plat of the Property, shall be considered private and for the sole and exclusive use of the Owners of Homesites within the Property. Neither Declarant's execution nor the recording of any plat nor any other act of Declarant with respect to such areas is, or is intended to be, or shall be construed as a dedication to the public of any such areas, facilities or amenities.

**5.10 Rules and Regulations.** The Association may make reasonable rules and regulations governing the use of the Property, including the Common Elements, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Copies of such rules and regulations shall be maintained by the Secretary of the Association and furnished to all Owners upon request. Such rules and regulations shall be binding upon the Owners, their families, visitors, guests, servants, lessees, agents, successors and assigns until and unless they are specifically amended, overruled or canceled in a regular or special meeting of the Association by the affirmative vote of seventy-five percent (75%) of the total vote of the membership of the Association.

**5.11 Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**5.12 Personal Property for Common Use.** The Association may from time to time acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

## 6

### ARTICLE 6

#### COMMON EXPENSES

**6.1 Creation of the Lien and Personal Obligation of Assessments.** Each Owner for each Homesite owned within the properties, 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: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on each Homesite and shall be a continuing lien upon each Homesite against which each such assessment is made, but only from such time as a Claim of Lien is filed as hereafter provided. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Homesite at the time when the assessment fell due.

**6.2 The Common Expenses** of the Planned Community include:

**6.2.1** All amounts expended by the Association or the Declarant in enforcing the Declaration, the Bylaws, or the Architectural Policies and Procedures.

**6.2.2** All amounts expended by the Association in carrying out any duty or discretion as may

be required or allowed by the Declaration or the Bylaws.

**6.2.3** All amounts declared to be Common Expenses in the Declaration or Bylaws.

**6.2.4** All taxes and special assessments which may be levied from time to time by any governmental authority upon the Common Elements in the Planned Community.

**6.2.5** Fees and expenses of managing and administering the Association and maintaining, repair or placement of the Common Elements;

**6.2.6** Expenses of utility services for the Common Elements, including water, gas, electricity and sewer;

**6.2.7** The costs of all insurance premiums on all policies of insurance obtained by the Board pursuant to the Declaration;

**6.2.8** All rental and other payments required to be made for any property which is hereafter leased or rented for the use and benefit of the Association;

**6.2.9** Amounts determined by the Board to be reasonably required as working capital of the Association, for a general operation reserve, for a reserve fund for replacements, for deficiencies arising from unpaid assessments, and such amounts as may be required for the purchase or lease by the Board or its designee, corporate or otherwise, on behalf of all Owners of any Homesite who has elected to sell or lease such Homesite or Homesite which is to be sold at a foreclosure or other judicial sale;

**6.2.10** Special assessments for capital improvements;

**6.2.11** Any ad valorem real property taxes and governmental special assessments affecting the Common Elements which are not assessed upon the Owners separately;

**6.2.12** Fees and expenses for the promotion of the health, safety and welfare of the residents of the Property;

**6.2.13** Maintenance and operation expenses for the streets, gatehouses, walking or jogging trails, any recreational facilities (pools, tennis courts or other similar recreational amenities constructed by Declarant or approved by the Association after the Declarant Control Period), any future Community Center Building and Grounds, community garden, native plant nursery, playground, wetlands, parks and other properties owned, leased or used by the Association or for which the Association has maintenance responsibility.

**6.2.14** Costs and expenses that the Association incurs to arrange with third parties to furnish trash collection, snow removal, and other common services to each Homesite or Residence Unit.;

**6.2.15** Costs and expenses for the acquisition, improvement, repair and maintenance of the properties, services and facilities owned, leased or acquired by the Association;

**6.2.16** Costs and expenses for the employment of third party managers for the Common Elements, accountants, attorneys and other professionals to represent the Association when necessary;

**6.2.17** Costs and expenses to purchase, install, maintain and replace, if damaged, at Association expense, all street directional and regulatory signs in the Development Area.

**6.2.18** Costs and expenses of maintenance and landscaping on the rights of ways of any public street or road abutting the Development Area, including entranceways, identifying signs and any landscape berm within the boundary of the Development Area.

**6.2.19** Cost and expenses of maintenance of any reserved utility easements, including drainage easements, whether located within the Development Area, regardless of ownership.

**6.2.20** Costs and expenses for the procurement and maintenance of fidelity and performance bonds for its officers, agents and employees.

**6.2.21** All Security Expenses.

**6.2.22** All other amounts necessary to carry out the responsibilities of the Association under the terms of the Declaration or the Bylaws.

**6.2.23** Any valid charge against the Association or against the Common Elements as a whole.

**6.2.24** Expense agreed upon as Common Expense by the Association and lawfully assessed.

against Owners of Homesite or Residence Units in accordance with the Declaration or Bylaws.

**6.2.25** Any other expense declared a Common Expense by the provisions of the Declaration or the Bylaws.

**6.3 Special Assessments for Capital Improvements.** In addition to the assessments provided for above, the Association may levy special assessments for the purpose of paying, in whole or in part, the cost of construction of any new improvement or reconstruction or replacement of any existing improvement within the Common Elements, including the cost of any fixtures or personal property relating thereto; provided that such assessment shall have been approved by the vote of the holders of at least two-thirds (b)of the total vote of the Association at a regular or special meeting duly called, written notice of which shall have been given in the manner specified in the Bylaws of the Association. The due date of any special assessments shall be fixed in the resolution or resolutions authorizing such assessments. Special Assessments shall be assessed at a uniform rate as applied to Regimes.

**6.4 Emergency Special Assessments.** The Association may levy an emergency special assessment when, in the sole determination of the Board, there is potential danger of damage to persons or property. Such emergency special assessments may be utilized to pay for preventative, protective or remedial construction, reconstruction, improvements, repairs or replacements. Events justifying emergency special assessments include, but are not limited to, hurricanes, floods, and Emergency special assessments shall be collectible from Homesite and Residence Unit Owners in such manner as the Board shall determine.

**6.5 Certificates.** The Association shall, upon request by an Owner or prospective Owner or such person's agent, and for a reasonable charge not to exceed \$50.00, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Homesite have been paid. A properly executed certificate of the Association or by its Manager as to the status of assessments on a Homesite is binding upon the Association as of the date of its issuance.

**6.6 Procedure for setting Annual and Special Assessments.** The Board of Directors shall annually adopt a proposed budget and the annual assessment for each Homesite for the next year. Within 30 days after adoption of any proposed budget for the Association and assessments for the Homesite Owners, the Board shall provide a summary of the budget and assessments to all Homesite Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget and the assessments based thereon not less than 14 nor more than 30 days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget and the assessments based thereon are ratified unless at that meeting a majority of all Owners in person or by proxy rejects the budget. In the event the proposed budget is rejected, the periodic budget last in effect and the assessments based thereon shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors. In the event that the Association proposes a special assessment, it shall be set forth as a separate item in connection with the annual proposed budget and the procedure for setting the special assessment shall be as set forth above, except that the special assessment shall be ratified separately from the other portions of the budget.

**6.7 Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum or the maximum interest rate permitted to be legally charged under The Planned Community Act at the time of such delinquency, whichever is greater, and shall constitute a lien on the Homesite when a Notice or Claim of Lien upon recordation in the Office of the Clerk of Court of Moore County, by the Association setting forth the name of the Owner, the Identifying Number of the Homesite, when the Assessment became due, the name of any subsequent Owner transferred the Homesite since the Assessment became due, and the amount owed, exclusive of any collection expense. In addition to such interest charge, the delinquent owner shall also pay such late charge as may be allowed by the Planned Community Act. The Association may bring an action at law against any Owner personally obligated to pay the same, and/or foreclose the lien against the

property, and interest, late payment fee, fines, cost and attorneys' fees of such action of foreclosure shall be added to the amount of such delinquent Assessment. Notwithstanding the foregoing, however, nothing herein contained shall be construed to obligate the Board to bring any legal action or to prosecute any such action to a final conclusion if it is determined by the Board that it would be in the best interest of the Association to forego, to delay or to discontinue any such legal proceeding. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Area or abandonment of his Homesite. The Association's lien maybe foreclosed as provided in the Planned Community Act, as the same may be in effect at the time that foreclosure is commenced.

**6.8 Collection.** The Board shall take prompt action to collect the full amount of all fees, charges, assessments and other amounts, including any installment thereof, due from any owner which remain unpaid for more than ten (10) days from the respective due date for payment thereof. In the event of failure by any owner to pay within said ten (10) days any such amount, then the entire balance of all such amounts, including, without limitation, all amounts which would otherwise be payable in installments, may, at the option of the Treasurer of the Association, be accelerated and be declared immediately due and payable in full, without notice.

**6.9 Initial Limitation on Assessments.** The initial monthly annual assessment of the first year until the first annual budget is adopted shall not exceed \$10 per month, or \$120 per year, for unimproved Homesites or \$10 per month or \$120 per year for Homesites with the issuance of a Building Permit for any Residence Unit.

**6.10 Rate of Annual Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Homesites and may be collected on a monthly, quarterly or yearly basis or such other periodic basis as the Board of Directors of the Association may set. Emergency special assessments shall be collectible from Homesite and Residence Unit Owners in such manner as the Board shall determine.

**6.11 Date and Commencement of Annual Assessment.** The annual assessments provided for herein shall commence as to each Homesite on the first day of the month following the issuance of a certificate of occupancy for a residence on that Homesite. The first annual assessment shall be adjusted according to the number of whole months remaining in the calendar year and shall be paid at closing along with an additional two (2) months assessment to be used as an initial unspecified reserve.

**6.12 Subordination of the Lien to Mortgages.**

**6.12.1** The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust if, but only if, all such assessments with respect to such Homesite having a due date on or prior to the date such mortgage or deed of trust is filed of record have been paid. Sale or transfer of any Homesite shall not affect the assessment lien or liens provided for in the preceding sections. No such sale or transfer shall relieve such Homesite from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust filed prior to the time of transfer.

**6.12.2** Such subordination is merely a subordination and shall not relieve the Owner of the mortgaged or pledged property of his personal obligation to pay all assessments coming due at a time when he is the Owner.

**6.13 Exempt Property.**

**6.13.1** Each Homesite which is subject to this Declaration shall be exempt from the assessment, charges and liens created herein while owned by Declarant.

**6.13.2** All Common Elements, including any Homesite which may be designated for use as such by Declarant, shall be exempt from the assessments, charges and liens created herein.

**6.13.3** The grantee in conveyances made to utility companies for wells, tanks, pipelines, treatment plants and dispersion fields, liens, pumping stations and maintenance facilities or for the purpose of creating any utility easement;

**6.13.4** All properties exempted from taxation by the laws of the State of North Carolina upon the

terms and to the extent of such legal exemptions (Homestead exemptions shall not be considered an exemption);

7

**ARTICLE 7**  
**COMMON ELEMENTS**

**7.1 Common Elements.** "Common Elements" means all real and personal property, together with those areas within dedicated portions of the Development Area and the Property, which may be deeded to, acquired or leased by the Association for the common enjoyment of the members of the Association; or, any reserved easement or structure that by this Declaration is the responsibility of the Association for ongoing maintenance, repair and replacement. It is the intention of Declarant that essentially all of the Development Area other than the Homesites will be conveyed to the Association at some point and be Common Elements, which includes, but is not limited to recreational sites, sewer and drainage areas, and other areas shown on any recorded plat other than Homesites. The Common Elements may consist of the remaining portion of the Property including, but not limited to, any real property conveyed to the Association, which may include but not be limited to, vehicles, equipment, and the ownership and / or maintenance of the roadsides, shoulders, landscape berms, drainage areas, landscaping, boundary fencing, signs at the entrances and along said roadways, any recreational site(s) and facility(ies), maintenance building(s) and equipment, storm sewers, drainage, walking and jogging trails and gas line easements. The Common Elements shall ultimately consist of the remaining portions of the Development Area after deleting the (i) Homesites, (ii) Utility Areas, and (iii) such other areas, if any designated to be excluded by Declarant on the filed plat or in this Declaration. Notwithstanding anything else herein above to the contrary, or any label or notation on any plat of the Property, Declarant hereby reserves unto itself the sole and exclusive right to sell, convey and grant utility easements on over and under the Common Elements to serve other parcels of land not within the Property or the Planned Community, and to retain any revenue from said sales.

**7.2 Easements Affecting Common Elements.**

Subject to Declarant's Development Rights, the Members have an easement (i) in the Common Elements for purposes of access to their Homesites and (ii) to use the Common Elements and all real estate which may become Common Elements for all other purposes, except as otherwise provided in the Declaration. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising special Development Rights reserved in the Declaration, including reserved access rights over, upon and through all streets. Every Owner shall have a right and easement of enjoyment in and to the Common Elements owned by the Association, or for which the Association has maintenance responsibility, which shall be appurtenant to and shall pass with the title to every Homesite, subject to the following provisions:

**7.2.1** The right of the Association to suspend the voting rights and right to use recreational facilities that are Common Elements by an Owner (and the occupants of such Owner's Residence Unit) for any period during which any assessment against said Owner's Homesite or Residence Unit remains unpaid; and for a period not to exceed sixty (60) days for an infraction by an Owner or by any occupant of such Owner's Residence Unit of the Association's rules and regulations;

**7.2.2** The right of the Association to dedicate or transfer, or to grant an easement in or to all or any part of the Common Elements to Declarant, any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association and the grantee expressed in an instrument agreeing to such dedication, transfer or grant, signed by the Association and placed upon the records of the Register of Deeds of Moore County, however said right shall be subject to the Declarant's reservation of the sole and exclusive right to sell or grant utility easements in the Common Elements and to receive the revenue of said sales;

**7.2.3** The right of the Association to provide for the exclusive use by an Owner (or any occupant of an Owner's Residence Unit) of certain portions of the Common Elements at certain

designated times and for such functions as may be from time to time permitted under said rules and regulations and the right of the Association to charge a fee for such exclusive use.

**7.2.4** The reservation by Declarant of all necessary easements, including the right to grant easements, including but not limited to access, utility and drainage easements. Declarant hereby reserves unto itself the exclusive right to sell, convey and grant utility easements on over and under the Common Elements to serve other parcels of land not within the Property or the Planned Community, and to retain any revenue from said sales.

**7.2.5** The right of the Declarant, in its sole discretion, and at no cost to any Owner, to grade, pave or otherwise improve any street shown on any recorded plat of the property.

**7.2.6** The right of the Association to charge reasonable admissions and other fees for the use of any recreational facility situated in the Common Elements.

**7.2.7** The right of the Association, in accordance with the Declaration and Bylaws, to borrow money for the purpose of improving the Common Elements and in aid thereof to mortgage said property, and the rights of such mortgage in said properties shall be subordinate to the rights of the homeowners hereunder.

**7.2.8** The right of the Declarant to develop The Planned Community and to sell or lease Homesites or Residence Units to purchasers or lessees. As a material condition for ownership of a Homesite or Residence Unit, each Owner releases Declarant from any claim that the Owner might have for interference with his quiet enjoyment of the Common Elements due to the development of The Planned Community, whether or not the construction operations are performed on the Common Elements or any Homesites owned by Declarant, and each Owner acknowledges and agrees that Declarant shall have the sole right to design, construction, development and improvement of the Property.

**7.2.9** The right of the Declarant for so long as Declarant owns or has any use rights to any property subject to this Declaration, to transact any business necessary to consummate sales of the property throughout The Planned Community, including, but not limited to, the right to maintain sales office(s) within the Development Area, or on the Common Elements in locations(s) to be selected by Declarant, to have employees in such offices, to construct and maintain other structures or appurtenances which are necessary or desirable for the development and sale of the Property throughout The Planned Community including without limitation, sales models and parking areas; to post and display a sign or signs on any Homesites or Residence Units owned by Declarant or the Property; and to use the Common Elements and to show Homesites and Residence Units. Sales office signs and all other structures and appurtenances pertaining to the sale or development of property within The Planned Community shall not be considered Common Elements and shall remain the property of the Declarant. Further, Declarant may authorize other builder/developer(s) to exercise the rights reserved in this Section, singularly or in concert with Declarant.

**7.2.10** The right of the Declarant to have a Permanent Sales Office Building and Operations after the expiration of the Declarant Control Period and after sales of all Homesites, including Homesites added pursuant to Article 2.2. No other commercial or real estate offices shall be located on the Common Elements or in The Planned Community. After the Declarant Control Period, regardless of whether Declarant owns or has any use rights to any property in the Planned Community, Declarant or its assignee shall have the right but not the obligation, to continue to exercise the rights granted to Declarant to sell and lease property at no cost or charge of any kind, except for the payment of ad valorem taxes on any property so occupied and that any such retained privilege shall be deemed to be one (1) Residence Unit Homesite for which the Declarant or its assigns, shall be subject to Common and Special Expense assessment in the manner as all other Owners.

**7.3 Usage Rights.** The Common Elements shall be used only for the purposes for which they are intended in providing services and facilities for the common use and enjoyment of the

Homesite owners and occupants of the Residence Units. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by an Owner without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Elements by an Owner, except upon the prior written consent of the Association.

**7.4 Area Boundaries and Conveyance of Common Elements.** Each Homesite or Homesite shall have the boundaries set forth in the plats filed in the County Registry of Deeds by Declarant as each phase is developed and on subsequent plats of additional property made subject to this Declaration. The Common Elements, as defined herein, when owned by the Association, shall remain undivided, and no right shall exist to partition, or divide said Common Elements except as provided herein. The Common Elements are intended for the use and enjoyment of the Homesite and Residence Unit owners and their guest and invitees. Title to the Common Elements shall remain vested in Declarant until the expiration of the Declarant Control Period. Notwithstanding the manner in which fee simple title is held, the Association shall be responsible for the management, maintenance and operation of the Common Elements and for the payment of all property taxes and other assessments which are liens against the Common Elements from the after the date of recordation of the Declaration. Reasonably soon after the expiration of the Declarant Control Period, Declarant shall convey all of its right, title and interest in the existing Common Elements to the Association. Such conveyance shall be free and clear of all encumbrances and liens other than this Declaration, and the terms and conditions recited herein and any reserved easements necessary for the beneficial use of any of Declarant's remaining property that is not then a part of the Property.

**7.5 Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, and subject to the terms and conditions recited herein, his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside in his Residence Unit.

## **ARTICLE 8 FINANCING PROVISIONS**

**8.1 Approval of Owners and Holders of First Deeds of Trust.** Unless at least seventy-five (75%) percent of the owners and holder of first deeds of trust on Homesites located within the Property have given their prior written approval, the Association shall not:

**8.1.1** By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes or the conveyance of such systems to governmental bodies shall not be deemed a transfer within the meaning of this clause.

**8.1.2** Change the method of determining the obligations, assessments, dues or other charges which may be levied against an owner.

**8.1.3** By act or omission change, waive, or abandon any plan of regulation, or enforcement thereof pertaining to the architectural design or the exterior appearance of residences located on Homesites, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the Planned Community.

**8.1.4** Fail to maintain liability insurance coverage on the Common Elements.

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## **ARTICLE 9 SEWAGE DISPOSAL AND WATER SYSTEM**

**9.1 Charges.** Homesite Owners agree to pay any availability, connection or surcharge fee for water or sewer, which may be approved by the North Carolina Utilities Commission prior to connection to such system. All usage charges of any nature for the utilities shall be paid by the Owner.

**9.2 Connection Procedure.** No permits and/or approvals for the construction of improvements on any Homesites shall be granted to and approved by the Declarant unless and until the Owner of a Homesite desiring such approval shall have made satisfactory contractual

arrangements with a licensed plumber, approved by Declarant for making connections to an onsite sewage disposal and/or the central water system for such property Owner's Homesite.

**9.3 Private Water Wells.** If the Declarant determines, in its sole discretion, that private wells may be constructed and drilled, said private water wells may be constructed or drilled only with the prior written consent of and pursuant to the specific policies, terms and restrictions established by the Declarant; and water therefrom may be used only for irrigation and / or heating and cooling purposes, and temporary potable use subject to the approval of local statutory regulations and then only until the permanent water system is installed.

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## ARTICLE 10 RESERVED EASEMENTS

**10.1 Utility and Drainage Easements.** Declarant and its successors and assigns reserve the right to construct and maintain utilities on the Common Elements, open space, streets and roads of the Property either above or below ground and to make all necessary slopes for cuts or fills upon the Homesites as needed as determined by the Declarant or to grant convey and sell said easements rights for the benefit of other parcels of land not within the Planned Community and to retain revenue from said sales. Declarant reserves perpetual utility easements under, over and across a strip ten (10) feet (unless otherwise noted on any recorded map, in which case said map shall govern) in width adjacent to and along the front, side and rear yard lines of each Homesite for the purpose of placing, laying, erecting, constructing, maintaining and operating, or of authorizing the placement, laying, erection, construction, maintenance and operation of utilities (including, without limitation, sewage, water(including irrigation), storm drainage, culverts, sprinkler lines, natural gas lines, TV wires, irrigation lines, security wires, street lights, electricity, gas, cablevision, telephone and telegraph). Within these easement areas, no structure, planting or other material (other than sod) which may interfere with the installation and maintenance of underground utility facilities shall be placed or permitted to remain unless such structure, planting or other material was installed by the Declarant. The Association, its successors and assigns, are hereby granted access to all easements within where such underground facilities are located for the purpose of operation, maintenance and replacement thereof.

**10.2 No Interest in Utilities.** The interest conveyed by Declarant to any of said Homesites by contract, deed or other conveyance, shall not in any event be held or construed to include the title to the water, gas, cablevision, sewer, storm sewer, electric light, power, telegraph and telephone lines, poles or conduits, or any other utility or appurtenances thereto constructed by Declarant, its agents, or by any utility company along or upon said Homesites, or any part thereof, to serve said property. The right to sell, convey or lease water, sewer and other utility lines and their appurtenances erected by or on behalf of Declarant is hereby expressly reserved to Declarant.

**10.3 Easement for Use of Streets.** Declarant hereby grants, conveys and assigns and sets over to every Owner, his family, tenants or bona fide guests the non-exclusive right of ingress, egress and regress over, upon and across the streets within the Property and they shall have the use of said streets for access to and from public highways adjoining the properties. The Declarant and/or the Association reserves the right at any time hereafter to dedicate and convey such streets to any appropriate governmental body or to the public.

**10.4 Master Electronic Reception Apparatus.** With the prior written consent of the Association, which may be withheld at its sole discretion, master antennas, satellite dishes, or cable television facilities may be located upon certain portions of the Property by the Association. Any such antennas, satellite dishes and connections shall be maintained in good order and repair by the Association. To the extent required to effectuate the foregoing plan, there shall be an easement in favor of each Residence Unit for the purpose of providing connection of the Residence Unit with the cable television facility or the master antenna or satellite dish most convenient thereto. The Common Elements shall be subject to a further easement for the placement thereon by the Association of such

master antennas, satellite dishes, cable television facilities and appurtenances, and for the installation and maintenance thereon of connections to serve any Residence Unit. All of the foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not materially interfere with the use, occupancy or enjoyment of all or any part of the Residence Unit and the Common Elements servient to such easements or to which such easements are appurtenant. No other mast, tower or pole or outside television antenna, satellite dish, aerial or pole shall be erected, constructed or maintained on any Homesite or Residence Unit located in such a manner as to be visible from the Homesite or outside of such Residence Unit.

**10.5 Inspection and Maintenance.** Any Member of the Board, or any other person authorized by the Board, shall have an access easement to all Common Elements for the purpose of inspection, maintenance, repair or replacement of any part of the Property.

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## **ARTICLE 11 VARIANCES**

**11.1 Variances.** The Declarant or the Declarant shall have power to and may allow reasonable variances and adjustments of these covenants, conditions and restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the regulations contained herein; provided, however, that such is done in conformity to the intent and purposes hereof; and, provided, also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements located in the Property. Variances and adjustments may include, but not be limited to, height, size and setback requirements hereunder pursuant to the Policies and Procedures established by the Declarant. To be effective, a Variance must be recorded and indexed under the name of the Association and the Owner

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## **ARTICLE 12 INSURANCE AND CASUALTY LOSSES**

**12.1 Insurance.** The Board or its duly authorized agent shall have the authority to and shall obtain and maintain in effect insurance for all of the improvements which are a part of the Common Elements against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full replacement cost (subject to such "deductibles" as the Board may determine) of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain and maintain in effect casualty and public liability insurance covering all Common Elements, such workmen's compensation insurance as may be required by law, all insurance which it may be required or authorized to obtain according to any amendment to this Declaration (all of which insurance shall be in accordance with the provisions of this Declaration), and such other insurance as the Board may from time to time deem appropriate and fidelity bond coverage as specified in FNMA Lending Guides, Chapter 3, Part 5, Insurance Requirements. Premiums for all such insurance shall be an expense of the Association.

**12.2 Policies.** All policies shall be written with a company holding a rating of "AAA" or better by Best's Insurance Reports. All policies shall be for the benefit of the Association and its mortgagees as their interests may appear. The original of all policies and endorsements thereto shall be deposited with the Board. The exclusive authority to adjust losses under policies maintained by the Board shall be vested in the Board or its duly authorized agent; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners or their mortgagees. Provision shall be made for the issuance of a certificate of insurance to each Owner and his mortgagee, if any, which shall specify the proportionate amount of such insurance attributable to the particular Owner's Homesite or Residence Unit. The Board shall conduct an annual insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all improvements on the Common Elements by one or more qualified persons, at least one of whom should be a qualified

building cost estimator. It shall be the individual responsibility of each Owner, at his own expense, to provide, as he sees fit, title insurance, homeowner's liability insurance, fire, casualty, theft and other insurance covering improvements, betterments and personal property damage and loss on his individual Homesite and Residence Unit. The Board or its duly authorized agent shall be required to make every effort to secure insurance policies that will provide for the following: (i) a waiver of subrogation by the insurer as to any claims against the Board of Directors, its duly authorized agent, the Owners, and their respective tenants, servants, agents and guests; (ii) a waiver by the insurer of its right to repair or reconstruct instead of paying cash; (iii) that the policies cannot be canceled, invalidated or suspended on account of anyone or more individual Owners;

that the policies cannot be canceled, invalidated or suspended on account of the conduct of any director, officer or employee of the Association, or its duly authorized agent, without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its agent or any Owner; (v) that any "other insurance" clause in the master policy exclude individual Owner's policies from consideration.

**12.3 Use of Proceeds.** If the damage is confined to the Common Elements, such insurance proceeds shall be used by the Association to defray the cost of such repairs. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be retained by the Association or its duly authorized agent and placed in the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Elements. If the cost of such repairs exceeds the amount of such insurance proceeds, such excess may be provided either by means of a special assessment levied by the Board against all Owners in proportion to each Owner's share in the Common Elements or by means of an appropriation from the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Elements as the Board, in the exercise of its sole discretion, may determine.

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### **ARTICLE 13 MAINTENANCE / REPAIR**

**13.1 Residence Units.** Each Owner, at his own expense, shall keep all of his Homesite and Residence Unit and all exterior walls, roofs, equipment and fixtures therein, landscaping, water, storm drainage, sanitary sewer and other utility lines serving only his Residence Unit in good order, condition and repair and in a clean and sanitary condition, and shall be responsible for all redecorating and painting necessary to preserve or maintain the good condition and appearance of the Residence Unit, the patios, terraces, balconies, verandas and storage facilities, if any, and all other improvements and landscaping located on the Homesite. Each Owner shall also be responsible for all damages to any Residence Unit or any of the Common Elements, which may result from the neglect, negligence, misuse or misconduct of such Owner, Members of his family, his or their guests, employees, agents, invitees or tenants, and the cost of repair of any such damage shall be charged to such Owner and shall be due and payable as provided in Article 6 hereof.

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### **ARTICLE 14 CONDEMNATION**

**14.1 General.** Whenever all or any part of the Common Elements of the Property shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association. In the event of condemnation of utility easements on, over or under the Common Elements or open space that are specifically reserved by the Declarant herein, any condemnation award for said reserved easements shall be paid to the Declarant.

**14.2 Common Elements.** If the taking includes any part of the Common Elements on which

improvements shall have been constructed (other than those contained within any Residence Unit) and if at least ninety percent (90%) of the total vote of the Association shall decide within sixty(60) days after such taking to replace said improvements, or any part thereof, on the remaining land included in the Common Elements and according to plans therefor first approved by the Association, then the Board of Directors shall arrange for such replacement. Alternatively, the Association shall treat the funds as a surplus.

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**ARTICLE 15**  
**NOTICES**

**Form of Notice.** Any notice required by the Act or by any of the documents shall be a written notice delivered to the recipient or mailed to him by United States mail, postage prepaid, at his last known address if the recipient is an individual, or addressed to the President of the Association, if the recipient is the Association or the Board. All notices delivered by mail shall be deemed to have been given as of the date and hour of the postmark thereon, or in the absence of such postmark, as of the date and time of mailing. The address of a Homesite or Residence Unit Owner reflected on either the Moore County Tax Department records or the records maintained by the Secretary of the Association shall be the address of each Owner for making of all notices required from the Board or the Association, and it shall be the responsibility of each Owner to furnish the Secretary written notice of any error in such records or change of address.

**15.1 Agent to Receive Service of Process.** All notices, stipulations, writings or processes to be served upon the Association, or upon the Board shall be delivered to the Registered Agent of the Association or to the then acting President of the Association.

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**ARTICLE 16**  
**TERM**

**16.1 Term.** These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2038, at which time said covenants shall be Automatically extended for successive periods of ten (10) years unless by vote of a Majority of the then Owners of the Homesites covered by these or substantially identical covenants, it is agreed to change said covenants in whole or in part.

**16.2 Covenants Running with Land.** The provisions of this Declaration and related documents shall constitute covenants running with the land, binding on the undersigned, its successors and assigns, and on all subsequent Owners of any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees, lessees, subleases and assigns. By the acceptance of any deed or other document conveying or transferring any interest in a Homesite or Residence Unit, the recipient thereof accepts and ratifies all covenants and restrictions contained herein and in the other documents. Each Homesite or Residence Unit Owner, by the acceptance of said deed or other document, covenants and agrees each with the other that he will join in the execution of any and all documents which are deemed necessary by the Board to renew or extend said covenants and restrictions from time to time and that any provision of law removing any limitation of time which would apply to this Declaration, if this Declaration were made after such provision of law becomes of effect, shall be deemed automatically to apply to this Declaration retroactively.

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**ARTICLE 17**  
**ASSIGNMENT / AMENDMENT**

**17.1 Assignment.** Any or all of the rights, powers and obligations, easements and estates reserved by or granted to the Declarant may be assigned by the Declarant as the case may be. Any such assignment or transfer shall be made by the appropriate instrument in writing in which the assignee or transferee shall join for the purpose of evidencing its consent to such assignment and its acceptance of the rights and powers, duties and obligations herein contained. Such assignee or transferee shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to the Declarant. After such assignment, Declarant shall be relieved and released of all obligations with respect to such rights, powers, obligations, easements or estates.

**17.2 Amendments by Declarant.** After the first conveyance of a Homesite by Declarant, Declarant shall retain the right to make any of the following amendments, which may be affected by the Declarant without consent of the Owners: (A) The Declarant or Association may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction. (B) The Declarant or Association shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Homesites and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government, the State of North Carolina, Moore County or Town of Aberdeen regarding purchase or sale in such Homesites and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. (C) Any amendment allowed as a result of the exercise of any reserved Development Right or Special Declarant Right identified herein. Any amendments made pursuant to this section shall not affect the residential character of the Planned Community or the common plan or scheme for residential development. Any and all such amendments shall be recorded in the office of the Register of Deeds, and upon recording the same shall become effective with respect to the matter to which such amendment pertains. Other amendments which do not affect materially any rights of any then Owners or his mortgagee or any amendment necessary to effect compliance with any other law may be made by Declarant by recording the same in the foregoing manner at any time prior to the earlier of (i) the date on which Declarant certifies to the Association that all of the Homesites have been conveyed to respective purchasers, or (ii) January 1, 2035. In the event that any such amendment does affect materially any rights of any then Owners or his mortgagee, such amendment shall be valid only upon the written consent thereto of all of the affected mortgages and fifty percent (50%) of the affected Owners of Homesites or Residence Units theretofore conveyed by Declarant. Any such amendment shall be certified by Declarant as having been duly approved and shall be effective when recorded in the office of the Register of Deeds.

**17.3 Amendments by Residence Unit or Homesite Owners.** At any time after the expiration of the Declarant Control Period, this Declaration shall be amended in the following manner:

**17.3.1 Proposed Amendments.** The Board or any Member of the Association may propose an amendment to this Declaration. Such proposed amendment must be submitted in writing to the Secretary of the Association at least twenty (20) days prior to the date of the special or regular Association meeting at which the proposal is to be considered.

**17.3.2 Notice.** A statement of the subject matter of the proposed amendment or amendments shall be included in the notice of any Association meeting at which the proposed amendments are to be considered.

**17.3.3 Resolution.** A resolution for the adoption of a proposed amendment may be proposed by any Member of the Association, including any officer of the Board. The resolution for adoption must be approved by the Members entitled to cast not less than sixty-six and two-thirds (66 2/3%) of the total authorized vote of the Association; provided, however, that any proposed amendment which would increase or decrease the percentage vote required to effect

any action by the Association must be approved by Members having, in the aggregate, the larger of such percentage vote as theretofore required or as would thereafter be required if such amendment were approved.

**17.3.4 Absentee Vote.** Members not present at any meeting may vote by proxy or by written vote as provided in the Bylaws.

**17.3.5 Provison.** Notwithstanding any other provision hereof, no amendment shall change the boundaries of a Homesite or Residence Unit nor the share in the Common Elements appurtenant to it, unless the record Owners of all Homesites and/or Residence Units shall approve the amendment in writing, and so long as Declarant owns three or more Homesites or Residence Units, no amendment may be made without the written approval of Declarant.

**17.3.6 Execution and Recording.** A copy of each amendment adopted pursuant to this Article shall be attached to an affidavit certifying that the amendment was duly adopted, which affidavit shall be executed by the President and attested by the Secretary in recordable form. The amendment shall be effective when such Amendment together with the Affidavit are filed for record in the Office of Register of Deeds.

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### ARTICLE 18 ENFORCEMENT

**18.1 Violation of Covenants.** If the parties hereto or the Owners, or any subsequent third parties, or their heirs, successors or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property herein described or situated in The Planned Community and which is subject to these or substantially identical covenants to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant to prevent it, her, him or them from so doing and / or to recover damages or other expenses arising from said violation. In addition, the Association and to the limited extent provided in Article 4.2.3, shall have the authority, at their sole option and discretion, to enforce the terms, conditions and covenants recited herein; provided, however, neither the Board nor the Declarant have the specific obligation to enforce any covenants herein, and neither shall be liable for any failure to enforce said terms, covenants and conditions.

**18.2 Invalidity.** Invalidation of any one of these covenants or any part thereof by judgment or court order in no way affects any of the other provisions which shall remain in full force and effect.

**18.3 Laws and Ordinances.** These covenants shall be in addition to any laws, ordinances, governmental zoning or regulations which maybe applicable to the Property herein described, and in the event such laws, regulations or ordinances may be more restrictive than these covenants, said laws, regulations or ordinances shall control.

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### ARTICLE 19 REMEDIES FOR VIOLATIONS

**19.1** All provisions, restrictions, conditions, easements, covenants, agreements, liens and charges herein shall be binding on all of the Homesites within the Property and the Owners thereof, regardless of the source of title of such Owners, and any breach thereof if continued for a period of thirty (30) days [five (5) days in the event of an emergency situation] from and after the date that Declarant, the Association, or any other Owners shall have notified in writing the Owner or resident in possession of the Homesite or Residence Unit upon which or as to which such breach has been committed to refrain from a continuance of such action and to correct such breach, shall warrant the Declarant, the Association or other Homesite Owner, to apply to any court of law or equity having jurisdiction thereof for any injunction or other property relief, and if such relief be granted, the court may, in its discretion, award to the plaintiff in such action reasonable expense in prosecuting such suit, including reasonable attorney's fees.

**19.2** Violations of any of the foregoing provisions, restrictions, conditions, easements, covenants, agreements, liens and charges shall not defeat or render invalid the lien of any mortgage or

deed of trust made in good faith for value as to any Homesite or portion thereof in the Property but such provisions, restrictions, conditions, easements, covenants, agreements, liens, and charges shall be enforceable against any portion thereof acquired by any person through foreclosure or by deed in lieu of foreclosure for any violation of the provisions, restrictions, conditions, easements, covenants, agreements, liens and charges herein contained occurring after the acquisition of said property through foreclosure, or deed in lieu of foreclosure.

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**ARTICLE 20**  
**DECLARANT EXEMPTIONS**

**20.1** Notwithstanding any other language or provision to the contrary to this Declaration or in any of the other related documents, Declarant shall be exempt from the covenants, restrictions and provisions contained in herein, so long as Declarant owns one or more Homesites or Residence Units. This exemption is granted for the purpose of allowing Declarant to complete improvements and complete the sale (or lease with option to purchase) of all Homesites and Residence Units without restriction. Neither the Owner, the Association nor any use of the Property shall interfere with completion of construction of the buildings, the Residence Units or other improvements, or with the sale of the Homesites or Residence Units by Declarant. Declarant may make such use of the unsold Residence Units and Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, model units, signs, storage areas, construction facilities and construction offices for the sale of the Homesite and sale and construction of the Residence Units covered by this Declaration.

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**ARTICLE 21**  
**MISCELLANEOUS**

**21.1 Multiple Owners.** If any Residence Unit or Homesite shall be owned as tenants in common by two or more persons, such persons shall be jointly and severally liable for the Common Expenses assessed against such Homesite or Residence Unit and for the prompt discharge of each and every obligation or duty imposed on such Owners by the Declaration and other governing documents.

**21.2 Applicability to Third Parties.** Each Owner of a Homesite and each Owner, lessee, tenant or occupant of a Residence Unit shall be bound to comply with the statutory provisions and shall comply with documents as the same maybe in effect from time to time and with the decisions, resolutions, rules and regulations of the Association, and Declarant as the same may be in effect from time to time, and failure to do so shall be grounds for an action to recover damages or to obtain injunctive and other equitable relief, or both.

**21.3 Conveyance.** Each Owner of a Homesite, by acceptance of a deed therefor, agrees that he has had full opportunity to inspect and examine same and waives any claim or demand which he might otherwise have had against the Declarant or any other person whomsoever as a result of any warranty, express or implied, or of any discrepancy between the Homesite as it then exists and as it is described in this Declaration, filed plats, the supplemental plats, the architectural plans and specifications or any other instrument.

**21.4 Perpetuities.** In any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the date of the survivor of the now living descendants of Barack Obama, President of the United States, and Jimmy Carter, George W. Bush, and George H.W. Bush, former Presidents of the United States.

**21.5 Severability.** Invalidation of any of these covenants or restrictions by judgment or court shall in no way affect any other provisions, which shall remain in full force and effect.

**21.6 Rights of Mortgagees.** Any mortgagee holding a first mortgage on any Homesite or Residence Unit may require that the loan documents evidencing and securing such loan contain provisions relating to reserve accounts for repairs and replacements, additional insurance, voting rights

and such other matters as may be acceptable to the mortgagee and the Owner. However, such provisions shall be binding only as between such mortgagee and Owner and no such provision shall violate, restrict or modify the provisions of this Declaration and the other governing documents.

**21.7 Declarant's Facilities.** No Homesite or Residence Unit Owner or any other person shall have any rights of any nature, express or implied, in any adjacent recreational or other facility owned by Declarant or other party not included as a part of the Property. Declarant shall have the unrestricted right at any time, and from time to time, to lease, mortgage or otherwise convey or encumber, modify, close, terminate, limit operations and the membership, expand and otherwise manage and control any such facilities and other property.

**21.8 Inspection and Maintenance.** If any Property, including any Homesite or Residence Unit is not maintained as provided herein, Declarant shall have the right, but not the obligation, to maintain same and recover from the Association and the respective Owners at costs incurred in providing such maintenance. Any Member of the Board, Declarant's maintenance personnel, or any other person authorized by the Board, shall have reasonable rights of access to all Common Elements and Homesites for the purposes of inspection, maintenance, repair or replacement of any part of the Property as provided in this section.

**21.9 Waiver.** The failure of the Association, the Declarant or any Homesite or Residence Unit Owner to enforce any covenant, restriction or other provision of the documents shall not constitute a waiver of the right to do so thereafter.

**21.10 Construction.** If any provision, sentence, clause, phrase or word of this Declaration or any other Association document is judicially held invalid or unenforceable for any reason, such holding shall not be deemed to affect, alter, modify or impair in any manner any other provision herein or in said documents. Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders. The captions used herein and in the other Association documents are solely to aid in the location of the various provisions, and in no way, shall such captions be construed to limit or define the subject matter of such provisions.

**IN WITNESS WHEREOF**, the Declarant has caused this Declaration to be executed and attested by its duly authorized corporate officers, and its corporate seal, or a reasonable facsimile thereof, to be affixed, all at the direction and approval of its Directors, to be effective the day and year first above written.

Shepherds Ridge Development, LLC  
  
 Allan G. Casavant, Managing Member

State of North Carolina - County of Moore

I, the undersigned Notary Public of the County and State aforesaid, certify that **Allan G. Casavant, Managing Member of Shepherds Ridge Development, LLC** personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 4<sup>th</sup> day of ~~March~~ April, 2018.

My Commission Expires: 12-12-2019

  
 Notary Public

