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DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENTS  
FOR COTTAGES AT EVERGREEN

(AT FLOWERS PLANTATION)

THIS DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENTS (the "Declaration") is made as of the date set forth in the below notary acknowledgment, by MCKEE HOMES LLC, a Delaware limited liability company, hereinafter referred to as "Declarant";

WITNES SETH:

WHEREAS, Declarant is the owner of certain property in Johnston County, North Carolina known as the Cottages at Evergreen (at Flowers Plantation) (the "Cottages at Evergreen"), a plat of which has been duly recorded in Plat Book 86, Pages 407 - 409 (the "Plat") of the Johnston County, NC Registry [Note: the defined term "Cottages at Evergreen" is intended to refer to all property shown on the Plat (which includes "Cottages at Evergreen, Phase One") and all future annexed phases]; and

WHEREAS, Declarant desires that Cottages at Evergreen be uniform in its development and the restrictions applicable thereto; and

NOW THEREFORE, Declarant declares that the real property described above shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, assessments, affirmative obligations, and liens hereinafter set forth which are for the purpose of protecting the value and desirability of, and which shall run with, the real property described above and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

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## DEFINITIONS

(a) "Association" shall mean and refer to Cottages at Evergreen Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns. The articles of incorporation of the Association are attached hereto as Exhibit A, and the bylaws (the "Bylaws") of the Association are attached hereto as Exhibit B.

(b) "Common Area" shall mean and refer to all of those platted areas labelled as such on the Plat, if any, along with the commonly-shared private roadway(s) and any improved storm pond(s) and other improvements located thereon, as applicable; and along with all commonly-shared subdivision signage, fixtures, equipment, landscaping, and improvements located in Cottages at Evergreen, as applicable. All Common Area shall be subject to the easements and other rights described herein. The term "Common Area" shall also include any common personal property and equipment acquired by the Association for the common benefit of the Owners. All Common Area, including the private roadway(s) and storm pond(s) and related improvements located thereon, are to be devoted to and intended for the common use and enjoyment of the Members and/ or persons occupying dwelling places.

(c) "Common Expenses" shall mean and include:

(1) All sums lawfully assessed by the Association against its Members;

(2) Expenses of administration, maintenance, repair, or replacement of the Common Area;

(3) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;

(4) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase or as the Association may deem appropriate to purchase;

(5) Any other expenses determined by the board of directors or approved by the Members to be common expenses of the Association;

(6) Other expenses that are deemed to be Common Expenses elsewhere in this Declaration.

(d) "Lot" shall mean and refer to any of the numbered plots of land shown on the Plat, as such Plat may be further amended or modified.

(e) "Member" when used in the context of discussing the Association shall mean and refer to the Declarant (during the Period of Declarant Control) and all those Owners who are Members of the Association as provided in this Declaration.

(f) "Owner" shall mean and refer to the Owner as shown by the records in the Johnston County, NC Registry, whether it be one or more persons, firms, associations, corporations, or other legal entities, including the Declarant, of fee title to any Lot located at Cottages at Evergreen; but notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee or holder of a security deed, its successors or assigns, unless and until such mortgagee or holder of a security deed has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

(g) "Period of Declarant Control" means the period commencing on the date hereof and continuing until the earlier of (i) the date Declarant no longer owns a Lot in Cottages at Evergreen or any property within a two (2) mile radius thereof (to additionally include contract options on such property in favor of Declarant); or (ii) when Declarant relinquishes such control in favor of the Association via a recordable document executed by Declarant and recorded in the local Registry.

( ) "Property" shall mean and refer to Cottages at Evergreen, which shall include all platted land shown on the Plat. The "Property" shall also include any future sections of Cottages at Evergreen as the same may be developed from time to time, if any, except that such future sections of Cottages at Evergreen shall become subject to these covenants only from and after the recording of the plat or plats for said future section(s) and the recording of a supplemental declaration which incorporates by reference this Declaration and which expressly makes the new section(s) subject to these covenants, or portions of same. The supplemental declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of Declarant, but such modification shall have no effect on all platted land shown on the Plat.

#### ARTICLE IA

#### SUBJECT TO MASTER COVENANTS FOR FLOWERS PLANTATION

The Cottages at Evergreen is part of the larger master planned community known as Flowers Plantation. As such, the Property is subject to (i) the terms of that certain Development Agreement for Flowers Plantation recorded in Book 1615, Page 601 (as re-recorded in Book 2757, Page 844), as amended; (ii) the terms of that certain Declaration of Easements and Covenant to Share Costs for Flowers' Plantation recorded in Book 1615, Page 609, as amended; and (iii) the terms of that certain Declaration of Covenants, Conditions and Restrictions for The Village @ Flowers Plantation recorded in Book 3233, page 495, as amended, all aforesaid Registry (together, the "Master Covenants").

#### ARTICLE II SPECIAL DECLARANT RIGHTS

Declarant reserves the following special declarant rights for the entire Property, including any future sections of Cottages at Evergreen during the Period of Declarant Control:

- (a) To complete any and all improvements indicated on the Plat and related engineering/architectural plans;
- (b) To exercise any development right reserved in this Declaration;
- (c) To construct and maintain any sales office, signs advertising the Property or any property which may be added thereto, management office or model on any of the Lots shown on the Plat;
- (d) To create easements through the Common Area and/ or Lots for the purpose of making drainage and utility improvements, as reasonably necessary, now or in the future;
- (e) To alter the size of any Lot, combine or merge two or more Lots, to subdivide Lots or to turn other Property into Common Area;
- (0) To annex any additional property developed in conformity with the plan of development, —

regardless of whether now owned or acquired in the future and whether or not presently contiguous, it being agreed that the additional property that is eligible for annexation into Cottages at Evergreen is that certain contiguous 15.402 acre parcel of land, as shown on plat recorded in Plat Book 86, Page 229, aforesaid Registry;

- (g) To use the existing roads and utility easements in favor of all future annexations;
- (h) To extend streets and utilities through any platted Lot owned by Declarant and/ or any builder affiliate;
- (i) To unilaterally amend this Declaration as set forth in Article XII, Section 2;
- (j) To assign the Declarant's rights to a successor in interest;
- (k) To alter the size of the Common Area, and to recombine a portion of same with any Lot (to include the right, during the Period of Declarant Control, to execute a deed on behalf of the Association, to convey any portion of the Common Area to Declarant and/ or any third party, subject to any approvals as may be necessary by the local government planning depart \_ Lucent or other municipal agency having jurisdiction over the Property);
- (l) To reserve and convey easement rights through the Common Area for the benefit of any contiguous residential subdivision or development that is not annexed into the Cottages at Evergreen; however, it is understood and agreed that the residents of any such contiguous residential subdivision or development shall be required to pay their pro rata share of the maintenance and repair of the Common Area (as well as the Shared Entrance Road, as defined in Article XI).

### ARTICLE III EASEMENTS

Section 1. Declarant reserves the right to subject the Property to a contract with public utility providers for the installation of overhead and/or underground electric or other utilities and/or for the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to such public utility provider by the owner of each improved Lot. Declarant and its successors in title may devote any Lot or portion thereof, not already sold, for any construction and uses which it, in its sole discretion, deems necessary in order to provide the subdivision with utilities. Declarant also reserves the right to subject the Property to further easements with public utility providers for water, sewer, gas, cable, and all other necessary utilities for the benefit of the subdivision.

Section 2. Declarant reserves the right to subject the Property to easements for the installation and maintenance of drainage facilities, as reasonably necessary. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may interfere with, or which may change, the direction or flow of drainage, or which may obstruct or retard the flow of water.

Section 3. A drainage easement is hereby reserved for the benefit of the adjacent subdivision (i.e. Evergreen at Flowers Plantation, as recorded in 4682, Page 317, aforesaid Registry, as amended) (the "Adjacent Evergreen Subdivision") for the limited purpose of allowing storm water runoff from the Adjacent Evergreen Subdivision streets to flow into any storm pond located on the Property.

Section 4. Subject to the provisions of this Declaration, any additional rules and regulations of the Association, every Member and every tenant and guest of such Member shall be vested with an easement of enjoyment in, over, and upon the Common Areas, and such easement shall be appurtenant to and shall pass with the title of every Lot. Said easement shall include a vehicular and pedestrian right of ingress, egress, and regress over all private roadways that comprise a portion of the Common Areas.

Section 5. The Declarant covenants for itself, its successors or assigns, that, upon the completion of the streets and infrastructure development within the Subdivision, it shall convey any platted Common Areas to the Association within a reasonable period of time. The Common Areas shall be conveyed to the Association subject to: (i) all easements, restrictions, covenants, and conditions of record as of the date of such conveyance, including the terms of this Declaration; and (ii) any existing mortgages or other liens; provided, however, that in no event shall the Association be obligated to assume any indebtedness related thereto.

Section 6. The Association shall have the right to place reasonable restrictions upon the use of the Association's roadways, including but not limited to the types and sizes of vehicles permitted to use said streets, the maximum and minimum speeds of vehicles using said streets, all necessary traffic and parking regulations, and maximum noise levels of vehicles using said streets.

#### ARTICLE IV USE RESTRICTIONS - LOTS

Section 1. All Lots shall be used for residential purposes only and shall not be used for any business or commercial purposes; provided, however, that Declarant reserves the right to use any Lot and any improvements thereon owned by Declarant (or an approved builder) as a model home with sales office. Group homes are prohibited.

Section 2. All Lots shall be residential lots, and no structure shall be erected, altered, placed or permitted to remain on any of said Lots except one detached single family dwelling of not more than two and one-half stories in height, a private garage for not more than three cars and other out-buildings in the rear of the dwelling house which may be incidental to normal residential use in subdivisions of similar category. Any such outbuildings shall be constructed in the same manner and with the same materials as the single-family dwelling located on the Lot. No mobile homes or modular/ manufactured houses may be placed on any of the Lots.

Section 3. No dwelling shall be erected or allowed to remain on any of the Lots which shall contain a heated-area living space of less than sixteen hundred and fifty (1,650) square feet or more than three thousand (3,000) square feet of which at least thirteen hundred (1,300) square feet must be on the ground floor. Notwithstanding the above, smaller dwellings containing heated-area living space of not less than fifteen hundred (1,500) square feet shall be permitted on up to ten percent (10%) of the Lots within Cottages at Evergreen, as long as they are not constructed on adjacent Lots. Heated-area living space shall mean the ordinary living space in a house which is designed and constructed so as to be capable of being heated for regular living use in cold weather. In the computation of floor space, furnace room areas, garages, carports, and porches shall not be counted. No residence or other building, and no fence, wall, utility yard, driveway, swimming pool or other structure or improvement, regardless of size or purposes, whether attached to or detached from the main residence, shall be commenced, placed, erected or allowed to remain on any building Lot, nor shall any addition to or exterior change or alteration thereto be made, unless and until building plans and specifications covering the same, showing the nature, kind, shape, height, size, materials, floor plans, exterior color schemes with paint samples, location and orientation on the building Lot and approximate square footage, construction schedule, and such other information as the Declarant shall require, including, if so

required, plans for the grading and landscaping of the building Lot showing any changes proposed to be made in the elevation of surface contours of the land, have been submitted to and approved in writing by the Declarant and until a copy of all such plans and specifications, as finally approved by the Declarant have been lodged permanently with the Declarant. The Declarant shall have the absolute and exclusive right to refuse to approve any such building plans and specifications and Lot-grading and landscaping plans which are not suitable or desirable in its opinion for any reason, including purely aesthetic reasons connected with future development plans of the Declarant of said land or contiguous lands. In passing upon such building plans and specifications and Lot-grading and landscaping plans, the Declarant may take into consideration the suitability and desirability of the proposed construction and of the materials of which the same are proposed to be built to the building Lot upon which it proposes to erect the same, the quality of the proposed workmanship and materials, the harmony of external design with the surrounding neighborhood and existing structures therein, and the effect and appearance of such construction as viewed from neighboring properties. In the event the Declarant fails to approve or disapprove such building plans and specifications within thirty (30) days after the same have been submitted to it as required above, the approval of the Declarant shall be conclusively presumed and the provisions of this paragraph shall be deemed to have been complied with. However, no residence or other building, structure or improvements which violates any of the covenants and restrictions herein contained or which is not in harmony with the surrounding neighborhood and the existing structures therein shall be erected or allowed to remain on any part of a Lot. All driveways shall be constructed of concrete.

The Declarant approval requirements of this Section 3 shall automatically expire upon the expiration or termination of the Declarant Control Period.

Section 4. All structures on any of said Lots shall comply with the setbacks as required by applicable municipal or government ordinance, as the case may be.

Section 5. Television satellite or dish antennas having a diameter in excess of twenty-two inches (22") are prohibited. All allowable satellite dishes or antennae are to be placed or installed at the rear of the house or the rear corner of the Lot, so that they are not easily visible from the street.

Section 6. No sign or signs other than a "For Sale" or "For Rent" sign shall be displayed on any Lot, except as specifically allowed by NCGS 47F-3-121 of the Planned Community Act.

Section 7. No automobile or motor vehicle may be dismantled or stored on said property; and no mechanically defective automobile, motor vehicle, mechanical machine, or machinery, shall be placed or allowed to remain on said property for over fourteen (14) days. Notwithstanding the above, these restrictions shall not apply if such vehicle is kept in an enclosed garage and out of sight from the street. Commercial vehicles, camper trailers, recreation vehicles, trailers, and/or boats shall be stored at the rear of the residence on a concrete pad and enclosed by a privacy fence.

Section 8. No trailer, tent, shack, garage, barn, shed, or similar type outbuilding shall be placed, erected or allowed to remain on any Lot without the written consent of Declarant, its successors or assigns. Nor shall any structure of a temporary character be used as a residence temporarily, permanently or otherwise.

Section 9. It is understood and agreed that these restrictions are made for the mutual benefit of the grantors and grantees and any and all subsequent grantees, and all such parties shall be deemed to have a vested interest in these restrictions and the right to enforce same.

Section 10. The invalidation of any one or more or any part of any one or more of the covenants and conditions set forth herein shall not affect or invalidate the remaining covenants or portions thereof.

Section 11. No animals, livestock, or poultry of any kind, except common pets, shall be raised, bred, or kept on any part of a Lot; however, dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purpose, and provided they are not allowed to run loose in the neighborhood. There shall be a maximum of three (3) dogs and three (3) cats allowed per Lot.

Section 12. Each Lot Owner covenants and agrees that he/ she will control the noise level emanating from any activities on the Lot at a reasonable level. The Lot Owner shall not allow the noise level to become a nuisance or to otherwise interfere with adjoining Lot Owners' reasonable use of their Lots.

Section 13. No fencing shall be placed, erected or allowed to remain on any Lot, except for black aluminum or white vinyl fencing, which may not exceed six feet (6') in height. Wood and chain link fencing is expressly prohibited.

Section 14. No swimming pools shall be allowed on any Lot.

Section 15. Upon the written request of any Lot Owner, the Declarant shall have the authority to grant a reasonable variance from any particular use restriction set forth in this Article IV during the Period of Declarant Control. Once the Period of Declarant Control has terminated, then the Association (through its board of directors) shall have the authority to grant any such reasonable variances, upon written request. The decision to grant any variance shall be based upon the particular hardship of the Lot Owner and the variance's minimal effect on other Lot Owners and the overall aesthetic appearance of the Subdivision. Any variance shall be set forth in writing and shall be recorded in the Johnston County Registry, indexed in the name of the Cottages at Evergreen' subdivision, the Association, and in the name of the affected Lot Owner(s). Notwithstanding anything in this Section 15 to the contrary, any such variance shall comport with the Master Covenants, including any and all additional architectural and other approval rights as may be set forth therein.

Section 16. Each Lot Owner covenants and agrees that he/ she will keep his/ her Lot in good condition and repair; and the dwelling, improvements, and landscaping located thereon shall be kept in presentable condition at all times. If any Lot Owner fails to abide by this covenant, then the Association shall be vested with a self-help right to perform such maintenance on behalf of such Lot Owner and shall charge the expense thereof to the Lot Owner, which shall become an additional assessment against any such Lot, enforceable in accordance with Article IX of this Declaration. The Association shall provide written notice to any Lot Owner who is in violation of this covenant, and the Lot Owner shall have a period fourteen (14) days to cure such violation (as of the Lot Owner's receipt of such written notice), after which the Association shall have the right to elect its self-help remedy and perform the work on the Lot Owner's behalf; and the Association shall have a license to enter upon the Owner's Lot for such limited purpose; however, notwithstanding the above, it is understood and agreed that if the Lot is in foreclosure (as evidenced by any foreclosure filing with the local Clerk of Court's office), then the requirement that the Association provide such written notice the Lot Owner along with such cure right shall be automatically waived; and the Association shall be immediately vested with the right to perform the work and assess the Lot (without such advance notice or cure right being necessary).

Notwithstanding anything to the contrary herein or elsewhere in the Declaration, the Association reserves the right to assume responsibility for some or all yard and landscaping maintenance for the Lots, so as to allow Cottages at Evergreen to be a low maintenance community; and the expense thereof shall be included in the Association budget and reimbursed by the Owners as a Common Expense. The Association shall not be responsible for yard and landscape maintenance on any Lot where the Owner has erected a fence that encloses all or a portion of the Lot, unless otherwise agreed by the Association; and an Owner shall not be entitled to any discount upon required assessment payments due the Association if the Owner's Lot is enclosed by a

fence. An easement right is hereby reserved in favor of the Association across the Lots in order to provide such yard and landscape maintenance.

ARTICLE V  
USE RESTRICTIONS - COMMON AREA

Notwithstanding anything to the contrary herein, no Owner may build or erect any structure or improvement upon or within the Common Area. No basketball goals may be erected or placed in the street right of way. No Owner may alter the grade or contours of any berm located within the Common Area. No Owner may plant or modify in any fashion the land, trees, shrubberies, and other landscaping within the Common Area except as may be required to comply with stormwater management regulations set forth below. It is the intention of the Declarant that the Association shall be solely responsible for the maintenance, upkeep and repair of any retention pond(s) within the Common Area.

ARTICLE VI  
ASSOCIATION'S STORMWATER MANAGEMENT OBLIGATIONS; HOLD HARMLESS;  
RELEASE OF LIABILITY OF DECLARANT

Section 1. Once the Declarant has constructed any required storm pond on any portion of the Common Area, and conveyed such Common Area to the Association, as evidenced by a recorded warranty deed, then, for good and valuable consideration, the Association shall become fully responsible for maintaining such storm pond and complying with all government requirements and/ or best management practices related thereto; and after a one (1) year period has elapsed since the completion of construction of any such storm pond (during which time the Declarant shall warrant the construction of such storm pond), the Declarant shall thereafter be fully released of all liability thereunder, except as otherwise specifically set forth in this Article VI.

Section 2. For good and valuable consideration, the Association and all Owners, jointly and severally, agree to save, defend, keep harmless, and indemnify Declarant, its successors and assigns, of and from all loss, damage, costs, charge, liability or expense, including court costs, attorneys' fees, and other costs and expenses incident to any suit, investigation, claim, demand or proceeding, which are threatened against or suffered, sustained, incurred or required to be paid by Declarant as a result of the Association's failure to comply with the requirements set forth in this Article VI. In addition, for good and valuable consideration, the Association and all Owners, jointly and severally, release Declarant, its successors and assigns, from any and all liability in any way related to such storm ponds and/ or the Common Area, except as otherwise specifically set forth elsewhere in this Declaration. The provisions set forth in this Article VI may not be altered or rescinded without the express written consent of the Declarant.

ARTICLE VII  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Every Owner shall be a Member of the Association. The Declarant acting through its designated officers, employees and agents shall be a Member of the Association. In the case of multiple ownership of any Lot, each Owner shall be a Member, subject to such limitations and fees established by the Declarant.

Section 2. The Association shall have one type of regular voting membership. Each Member shall be entitled to one (1) vote for each Lot which he/ she owns. The vote for such Lot shall be exercised as they

determine, but in no event shall more than one vote be cast with respect to any Lot. If a residence is constructed on more than one Lot, the Owner shall have one vote for the residence, but shall have no additional vote for each other Lot comprising a part of the total consolidated home or building site so long as such Lot remains a part of the consolidated site.

Section 3. The Association shall be initially governed by a board of directors consisting of up to three (3) persons, with the number in subsequent years to be determined as provided for in the By-Laws of the Association. The Declarant shall have the right to appoint and remove all three (3) persons on the board, or any lesser number in its discretion, and to appoint and remove all officers of the Association during the Period of Declarant Control.

Section 4. Each Member shall be entitled to as many votes as equals the number of votes he/ she is ordinarily entitled to multiplied by the number of directors to be elected, but may not cast all of such votes for any one (1) director and must distribute them among the number to be voted for, and all votes must be cast in whole numbers and not fractions thereof. It is the intent of this Section to prohibit cumulative voting.

ARTICLE VIII  
PROPERTY RIGHTS IN THE COMMON AREA

Subject to the provisions of this Declaration, the rules and regulations of the Association, and any fees or charges established by the Association, every Member and every tenant and guest of such Member shall have a right of easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title of every Lot. This appurtenant easement cannot be separated from or conveyed separately from fee simple title to the Lot. The privilege granted to guests and tenants of Members to use and enjoy the Common Area is subject to the following:

(a) the right of the Association, in accordance with its Bylaws or otherwise, to borrow money for the purpose of improving and/or maintaining the Common Area and providing services authorized herein and in aid thereof to mortgage said properties; and

(b) the special Declarant rights reserved herein.

ARTICLE IX  
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section I. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses; (2) special assessments for extraordinary maintenance and capital improvements; and (3) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvement to the Common Area if the Association shall default in payment thereof. The annual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. 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 Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his/ her successors in title unless expressly assumed by them.

The Association shall also have the authority, through the board of directors to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from

breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association to repair or remedy.

Each Owner covenants, for himself, his/ her heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him/ her within ten (10) days of the due date as established by the board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

Section 2. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses and for the use and enjoyment of the Common Area, together with reasonable and prudent reserves, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Area, the providing for limited access to the property, the procurement and maintenance of insurance as deemed appropriate by the board or as required by statute, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. The annual assessment for Common Expenses shall be determined on an annual basis in accordance with the Association budget. Any builder shall be exempt from the annual assessment until the first (1<sup>st</sup>) anniversary of the builder's purchase of any Lot (after which date such builder shall be responsible for payment of the annual assessment on a pro rata basis, until such time as the builder has sold the Lot to a homebuyer). The Association, acting by and through its board of directors, shall have the fiduciary discretion to adjust the annual assessment for Common Expenses on any annual (or more frequent) basis, as reasonably necessary; and shall have the authority to determine when such assessments shall be due and payable. Notwithstanding anything to the contrary herein, it is understood and agreed that the Declarant and/ or any building companies having common ownership with Declarant, shall be fully exempt from any and all assessment and/ or start-up fee requirements as set forth herein.

Section 4. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default and shall bear interest from the due date at the rate of eighteen (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his/ her Lot. The lien herein granted unto the Association shall be enforceable (and may be foreclosed) in accordance with Chapter 47F (or any other pertinent chapter) of the North Carolina General Statutes.

Section 5. As part of the base assessments in its annual budget, starting in the 2019 budget year, the Association shall collect sufficient funds from the Members to pay for Cottages at Evergreen's portion of the cost of maintenance of the Shared Entrance Road (as defined in Article XI). These funds shall be remitted to Bramble Road Maintenance I 10A, Inc., a North Carolina non-profit corporation, which is the entity responsible for maintaining the Shared Entrance Road. Specifically, the cost of re-paving the Shared Entrance Road is estimated to be \$50,000.00 in 2034, which cost is expected to be shared among the existing thirty-two (32) owners within the Adjacent Evergreen Subdivision and all of the Lot Owners within Cottages at Evergreen (it being noted that the respective contribution split assumes ninety-six (96) Lots in Cottages at Evergreen, now or in the future, assuming maximum build-out). Therefore, the Association shall annually remit a sum of \$2,499.75 to Bramble Road Maintenance II0A, Inc. starting in 2019 [it being understood that the association for the Adjacent Evergreen Subdivision shall annually remit \$833.25 per the requirement set forth in instrument recorded in Book 5120, Page 119 — see Section 3 thereof], which shall be collectively

assessed against the Lot Owners on an annual basis. Notwithstanding the foregoing, if the reasonable cost of the maintenance of the Shared Entrance Road shall be determined to exceed \$50,000.00, the Association shall collect and remit sufficient funds to pay for such actual cost.

At least sixty (60) days before the beginning of each fiscal year, the board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to any necessary reserve fund, and contributions to be made to Bramble Lane Maintenance HOA, Inc. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, if any, and the amount to be generated through the levy of base assessments and special assessments against the Lots.

The budget shall include (i) a line item for the required annual contribution to the Foundation pursuant to the terms of that certain Declaration of Easements and Covenant to Share Costs for Flowers' Plantation recorded in Book 1615, Page 609, as amended, aforesaid Registry; (ii) a line item for any required assessments or expenses pursuant to the terms of that certain Declaration of Covenants, Conditions and Restrictions for The Village @ Flowers Plantation recorded in Book 3233, Page 495, as amended, aforesaid Registry; (iii) a line item for costs due to the club owner for the mandatory membership fees associated with membership in the Pineville Club; (iv) a line item for contributions made to Bramble Lane Maintenance HOA, Inc., and (v) a line item for any additional fees to which the Property is subject for the larger Flowers Plantation master planned community, all of which shall be Common Expenses.

Section 6. Upon the first sale of each Lot in Cottages at Evergreen after the issuance of a certificate of occupancy for the residential dwelling constructed thereof, a working capital contribution of One Thousand and No/100 Dollars (\$1,000.00) shall be collected from the purchaser at the close of such sale for the benefit of the Association. Five Hundred and No/ 100 Dollars (\$500.00) of the working capital contribution shall be paid to The Village @ Flowers Plantation, Inc. pursuant to the Master Covenants, and the remaining funds may be used by the Association for the maintenance and repair of the private roads within Cottages at Evergreen. In addition, the Declarant reserves the right to collect an additional working capital contribution (not to exceed two (2) months of regular assessments) from such purchaser at the close of such sale for the benefit of further capitalizing the Association. The working capital contribution shall be a specific assessment against the Lot and shall be in addition to, and not in lieu, of the base assessment. Notwithstanding anything to the contrary herein, it is the intent of this paragraph that the working capital contribution provided for herein shall only be paid by the first Owner of a Lot, other than the Declarant or any builder, after a residential dwelling constructed thereon has been issued a certificate of occupancy by the appropriate governmental entity, and such fee shall not be binding or enforceable at law or equity against any subsequent Owner or mortgagee.

Section 7. During the Period of Declarant Control, Declarant shall: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of all base and special assessments collected by the Association in any fiscal year; or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans. No mortgage secured by the Common Area or any of the improvements maintained by the Association shall be given in connection with any such loan. Notwithstanding anything to the contrary herein, the Declarant and its affiliates may contribute assessments due from them in services or materials or a combination of services and materials (i.e. in kind contributions), rather than in money.

Section 8. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional mortgage lender and the lien for ad valorem taxes on any Lot. The sale or transfer of any Lot shall

not affect any assessment lien, and such lien shall run with title to any Lot against to which any such lien has attached. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or a tax foreclosure, or any proceeding in lieu thereof, shall extinguish the lien for such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior Owner. No sale or transfer shall relieve such Lot from liability for any assessments becoming due after such sale or transfer, or from the lien thereof.

ARTICLE X  
INSURANCE REQUIREMENTS; COMMON AREA

The Association shall keep liability (and casualty insurance, as appropriate) on the Common Area in the Cottages at Evergreen subdivision, in accordance with the minimum requirements of NCGS 47F-3-113 of the Planned Community Act, or other pertinent provision, as such may be amended. The board of directors of the Association shall have the right to purchase more insurance than the minimum so required, including additional coverage types or endorsements, in its fiduciary discretion.

ARTICLE XI  
SHARED ENTRANCE ROAD (WESTERN 221-FOOT PORTION OF BRAMBLE LANE);  
COST-SHARING FOR MAINTENANCE WITH ADJACENT EVERGREEN SUBDIVISION

It is noted that the western 221-foot portion of Bramble Lane, as shown on plat recorded in Plat Book 85, page 151, aforesaid Registry (the "Shared Entrance Road"), is used by the residents of both Cottages at Evergreen and the Adjacent Evergreen Subdivision. Easement rights of ingress, egress and regress are reserved over said Shared Entrance Road in favor of the Owners and guests of the Cottages at Evergreen by instrument recorded in Book 5120, Page 119, aforesaid Registry (see Section 1 thereof). The Association shall be responsible for its pro rata share of the maintenance and repair expenses for the Shared Entrance Road, as described in said instrument, and as specifically set forth in Article IX, Section 5 of this Declaration.

ARTICLE XII  
GENERAL PROVISIONS

Section 1. The Declarant (during the Period of Declarant Control), or any Owner, or the Association (acting through its board) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant or by any Owner or by the Association (acting through its board) to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. This Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns. This Declaration may be amended by a written recorded instrument signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association have been allocated; however, during the Period of Declarant Control, the Owners may not amend the Declaration without the written consent of Declarant, as evidenced by the Declarant joining as a signatory to any such amendment. In

addition, Declarant shall have the right to unilaterally amend this Declaration in a reasonable matter (taking into account the general the plan of development and not deviating therefrom), by a written recorded instrument during the Period of Declarant Control. Notwithstanding anything in the contrary in this Section 2 to the contrary, it is agreed that any amendments to this Declaration may not be in conflict with the Master Covenants.

Section 3. In the event of any conflict between the provisions of this Declaration and any applicable provisions of the Johnston County Ordinance (or other pertinent municipal ordinance), the provisions of the Johnston County Ordinance (or municipal ordinance, as the case may be) shall control.

Section 4. Any town and/or county ad valorem taxes on the Common Area, if any, as well as town and/or county assessments for public and private capital improvements on the Common Area, if any, shall be the responsibility of and paid by the Association from the common expense assessment as described elsewhere herein.

Upon default by the Association in the payment of any ad valorem taxes levied against Common Area or assessments for public or private capital improvements, which continues for a period of six (6) months, then each Lot Owner shall become personally obligated to pay the tax or assessment to the assessing governmental authority, with each Owner's portion of such taxes or assessments to be determined by on a pro rata basis, based on the total number of Lots, as may be equitably appropriate. If not paid by the Owner within thirty (30) days, said sum shall become a continuing lien upon any such Owner's Lot, and the taxing or assessing governmental authority may either bring an action at law against the Owner personally obligated to pay the same, or elect to foreclose the lien.

Section 5. Subject to the tetins contained in this Declaration which may lawfully deviate from the default terms contained in the North Carolina Planned Community Act (NCGS 47F et seq) (the "Act"), the Declarant hereby intends that the Cottages at Evergreen subdivision be expressly subject to the terms of the Act, as such may be amended.

[Remainder of This Page Intentionally Left Blank;  
Signature Page Attached Hereto]

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed by its authorized Member/ Manager as of the date set forth in the below notary acknowledgment.

DECLARANT:

MCICEF S LLC

By: \_\_\_\_\_  
Patrick J. McKee  
Member/ Manager

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose stated therein and in the capacity indicated: Patrick J. McKee, in capacity as Member/ Manager of McKee Homes LLC, a Delaware limited liability company.

Date: 6/11/11(c)C18'

Official Signature of Notary: *r*

Notary's Printed Name: \_\_\_\_\_ Tvi C4

My commission expires: 6/18/22 [Affix Notary Seal or Stamp]  
*84E*

Ashley L. Tucker  
NOTARY PUBLIC  
Cumberland County  
North Carolina

EXHIBIT A

[Attached Articles of Incorporation of Association]

[See pages that follow]



# NORTH CAROLINA

## Department of the Secretary of State

---

To all whom these presents shall come, Greetings:

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

ARTICLES OF INCORPORATION

OF

COTTAGES AT EVERGREEN OWNERS ASSOCIATION, INC.

the original of which was filed in this office on the 3rd day of April, 2018.



Scan to verify online.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 3rd day of April, 2018.

*XIAA&J foi6tAle'*

SOSID: 1686161  
Date Filed: 4/3/2018 2:09:00 PM  
Elaine F. Marshall  
North Carolina Secretary of State  
C2018 093 03103

State of North Carolina  
Department of the Secretary of State

ARTICLES OF INCORPORATION  
NONPROFIT CORPORATION

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

1. The name of the nonprofit corporation is: Cottages at Evergreen Owners Association, Inc.

2.  (Check only if applicable.) The corporation is a charitable or religious corporation as defined in NCGS §55A-1-40(4).

0. The name of the initial registered agent is: Patrick J. McKee

1. The street address and county of the initial registered agent's office of the corporation is:

Number and Street: 109 Hay Street, Suite 301

City: Fayetteville State: NC Zip Code: 28301 County: Cumberland

The mailing address *if different from the street address* of the initial registered agent's office is:

Number and Street or PO Box: \_\_\_\_\_

City: \_\_\_\_\_ State: NC Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

0. The name and address of each incorporator is as follows:

Name	Address
<u>L. Holden Reaves, Esq.</u>	<u>PO Box 53187, Fayetteville, NC 28305</u>
_____	_____
_____	_____

1. (Check either "a" or "b" below.)

a. The corporation will have members.

b. The corporation will not have members.

2. Attached are provisions regarding the distribution of the corporation's assets upon its dissolution.

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

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

Principal Office Telephone Number: (910) 672-7296

Number and Street: 109 Hay Street, Suite 301

City: Fayetteville state: NC  
 \_\_\_\_\_ Zip Code: 28301 County: Cumberland

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

Number and Street or PO Box: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

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

Name	Address	Title
Patrick J. McKee	109 Hay Street, Suite 301 Fayetteville, NC 28301	Chairman of the Board/ President

0. (Optional): Please provide a business e-mail address: \_\_\_\_\_

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

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

This is the 2<sup>nd</sup> day of April  
 \_\_\_\_\_, 20<sup>18</sup>.

Cottages at Evergreen Owners Association, Inc.

\_\_\_\_\_  
 Incorporator Business Entity

\_\_\_\_\_  
*Signature of Incorporator*

. Holden Leaves, Esq., Inc. Incorporator

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

NOTES:

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

BUSINESS REGISTRATION DIVISION  
 (Revised August, 2017)

P. O. BOX 29622

RALEIGH, NC 27626-0622  
 Form N-01

**Attachment to  
Articles of Incorporation of  
Cottages at Evergreen Owners Association, Inc.**

Provision for Dissolution

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

IN WITNESS WHEREOF, the Incorporator has executed this Provision for Dissolution this the 2<sup>nd</sup> day of April, 2018.

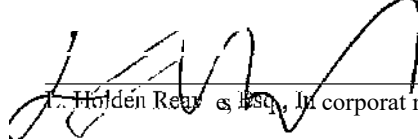
  
A. Holden Reed, Esq., Incorporator

EXHIBIT B

BYLAWS  
OF  
COTTAGES AT EVERGREEN OWNERS ASSOCIATION, INC.

ARTICLE I.  
BUSINESS ADDRESS

The initial business address of Cottages at Evergreen Owners Association, Inc. (the "Association") shall be c/ 0 109 Hay Street, Suite 301, Fayetteville, North Carolina 28301. The business address may be changed by the board of directors in its discretion.

ARTICLE II.  
MEMBERSHIP IN THE ASSOCIATION

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot in Cottages at Evergreen (at Flowers Plantation) subdivision (the "Subdivision") located in Johnston County, North Carolina, shall be a member of the Association. Ownership of such interest shall be the sole qualification for membership, and membership shall be appurtenant to and may not be separated from such ownership.

ARTICLE III.  
PURPOSES OF THE ASSOCIATION

The purposes and duties of the Association shall be:

- A. To manage the Subdivision pursuant to the terms and provisions of that certain recorded Declaration of Restrictive Covenants and Easements for Cottages at Evergreen (at Flowers Plantation) (to which these bylaws are attached) (the "Declaration"); these bylaws (the "Bylaws"); any rules and regulations promulgated by the Association or its board of directors (the "Rules and Regulations"); and otherwise in general accordance with the North Carolina Planned Community Act as codified in Chapter 47F of the North Carolina General Statutes;
- B. To enforce the provisions of these Bylaws, the Declaration, and any Rules and Regulations promulgated by the Association or its board of directors;
- C. To promote and protect the enjoyment and beneficial use and ownership of all of the Lots within the Subdivision (the "Lots").

No part of the net earnings of the Association shall inure to the benefit of its members, the members of its board of directors or its officers, or to any other person, except that the Association shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the above stated purposes.

ARTICLE IV.  
ASSESSMENTS

The Association shall make and collect assessments against the Lots as stated in the Declaration and as authorized by Chapter 47F of the North Carolina General Statutes.

ARTICLE V.  
MEETINGS OF MEMBERS

Section 1. Place of Meetings. All meetings of members shall be held at such place in Johnston County, North Carolina, as shall be designated on the notice of the meeting or agreed upon by a majority of the members entitled to vote thereat.

Section 2. Annual Meetings. The annual meeting of the members shall be held during the same month each year as determined by the board of directors, for the following purposes:

1. to ratify or reject the summary of the proposed budget submitted by the board of directors pursuant to Article VI below;
2. to elect the board of directors of the Association (subject to the provisions of the Declaration) for the coming fiscal year; and
0. to transact any other business that may come before the membership, including but not limited to the adoption, modification and/or repeal of any Rules and Regulations governing the Subdivision.

Section 3. Substitute Annual Meeting. If the annual meeting shall not be held on the day designated by these Bylaws, a substitute annual meeting may be called in accordance with the provisions of Section 4 of this Article V. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 4. Special Meetings. Special meetings of the members may be called at any time by the President or the board of directors of the Association, or upon the written request of not less than ten percent (10%) of the members.

Section 5. Notice of Meetings. Written notice of the meeting shall be delivered not less than ten (10) nor more than sixty (60) days (unless otherwise provided in the Declaration) before the date of any members' meeting, either personally, by mail, or by electronic mail over the internet, by or at the direction of the President, the Secretary, or other person calling the meeting, to each member of record. The notice shall state the time and place of the meeting and shall also state the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes and any proposal to remove an officer/director. If mailed, such shall be deemed to be delivered when deposited in the United States Mail, addressed to the member at his/her address as it appears on the record of members of the Association, with postage thereon prepaid. If sent by electronic mail over the internet, such shall be deemed to be delivered when sent by electronic email to an electronic mailing address designated in writing by the Lot owner. It shall be the responsibility of the individual members to keep the Secretary informed of their current addresses. In the absence of instructions from an individual member as to his/her address, the Secretary shall be entitled to rely on the most recent records of the Johnston County Tax Collector to determine the addresses of the owner(s) of a Lot. The notice of meeting must state the time and place of the meeting and all items on the agenda for the meeting.

When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than thirty (30) days in any one adjournment, it is not necessary to give any notice of the adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Section 6. Voting Rights. On matters of the Association's business submitted to vote of the membership, there shall be one (1) vote per Lot, regardless of the number of owners of a Lot. At any annual meeting, substitute annual meeting, or special meeting of members, thirty percent (30%) of the Lots (represented either in person or by proxy) shall constitute a quorum for the purposes of submitting any matter to a vote. Except as otherwise provided by the Declaration, Chapter 47F of the North Carolina General Statutes, or these Bylaws, all matters submitted to a vote at any meeting held in accordance with these Bylaws shall be decided by a simple majority of the total votes cast. In the event that business cannot be conducted at any meeting because a quorum is not present, the provisions of Chapter 47F-3-109 (or other pertinent provision of the Planned Community Act) shall control with respect to imposing a lesser quorum requirement for the rescheduled meeting after adjournment of the original meeting due to lack of a quorum.

Section 7. Voting by Proxy. Votes may be cast either in person or by one (1) or more agents authorized by a dated, written proxy executed by the member or his/her attorney-in-fact. A proxy terminates one (1) year after its date, unless it specifies a shorter term. Any form of proxy which is sufficient in law may be used, but the form as shown on Exhibit A-1 attached hereto shall be deemed sufficient.

Section 8. Voting List. At least ten (10) days before each meeting of members, the Secretary of the Association shall prepare an alphabetical list of the members entitled to vote at such meeting or any adjournment thereof, with the address of each, which list shall be kept on file with the book of records of the Association. This list shall be produced and kept open at the time and place of the meeting and shall be subject to inspection by any members during the whole time of the meeting.

Section 9. Waiver of Notice. Any member may waive notice of any meeting. The attendance by a member at a meeting shall constitute a waiver of notice of such meeting, except where a member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

## ARTICLE VI. BOARD OF DIRECTORS

Section 1. Purpose, Number and Term of Office. The business and affairs of the Association shall be managed by a board of directors of at least three (3) individuals, who shall be entitled to act on behalf of the Association. The board of directors shall be appointed by McKee Homes LLC (the "Declarant") until such time as the Period of Declarant Control (as defined in the Declaration) expires or terminates (and it is noted that during the Period of Declarant Control only, the total number of the board of directors may be less than three (3), to be determined in the Declarant's discretion). At the first meeting of the membership of the Association following the termination of the Period of Declarant Control, the members of the board of directors shall be elected by the membership of the Association and those persons who receive the highest number of votes at a meeting at which a quorum is present shall be elected. Each member of the board of directors shall hold office until his/her death, disability, resignation or removal, or until the expiration of his/her term and the election of his/her successor. All directors elected by the membership of the Association must be Lot owners.

Section 2. Powers and Duties. The board of directors shall have the power and the duty to act on behalf of the Association in all instances, except that the board may not amend the Declaration, terminate the Subdivision, elect members of the board (except to fill any vacancy in its membership for the unexpired portion of a term) or determine the qualifications, powers, duties or terms of office of members of the board. In addition the board of directors shall have the following specific powers, duties and responsibilities:

A. The board will keep a complete record of all of its acts and all affairs of the Association and make the same reasonably available for examination by any member, his/her agents or mortgagees.

B. The board will adopt a proposed budget for the Association to be approved or rejected by the membership of the Association at its annual meeting. The proposed budget shall be adopted at a meeting of the board to be held prior to the annual meeting of

the membership of the Association. A summary of the proposed budget, including the amount of any proposed assessments against the Lots shall be mailed to the membership not more than fourteen (14) nor less than thirty (30) days after the adoption of the proposed budget. The proposed budget shall be deemed ratified by the Lot owners unless at the annual meeting more than fifty percent (50%) of the Lot owners vote to reject it. At the annual meeting, there shall be no requirement that a quorum be present for purposes of approving the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the membership ratifies a budget subsequently proposed by the board of directors.

C. The board may fine any Lot in accordance with the provisions of the Declaration for any single violation of the Declaration, these Bylaws or any Rules and Regulations promulgated by the Board. In such event, the board shall provide the Lot owner fined an opportunity to be heard before an adjudicatory panel to be appointed by the board pursuant to Article X below. Multiple fines may be assessed against any Lot owner for multiple violations. Any such fines shall be deemed assessments against the Lot of such owner, and shall be collectable as provided in the Declaration.

D. The board may contract a management agent to perform and execute such duties, functions and responsibilities of the board as the board may deem appropriate; however, no such contract shall relieve the board from its fiduciary duty to the Association.

Notwithstanding any other provision herein, the board of directors is authorized, on behalf of the Association, to submit any dispute with or claim against the owner(s) of any Lot(s) to voluntary arbitration pursuant to any arbitration program then in effect in the General Court of Justice of Johnston County, North Carolina.

Section 3. Removal of Directors. Notwithstanding any provision in the Declaration or in these Bylaws to the contrary, the Lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the Lot owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member of the board of directors appointed by the Declarant.

Section 4. Vacancies. In the event of the death, disability, resignation or removal of a director, his/her successor shall be selected and appointed by the remaining members of the board of directors to serve until the next meeting of the membership of the Association; or until a successor is appointed by the Declarant if such vacancy is the result of the death, disability, resignation or removal of an initial director or a director who was appointed by the Declarant.

## ARTICLE VII. MEETINGS OF THE BOARD OF DIRECTORS

Section 1. Called Meetings. Meetings of the board of directors may be called by

or at the request of the President or any two (2) directors.

Section 2. Notice of Meeting. The person or persons calling a meeting of the board of directors shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called.

Section 3. Waiver of Notice. Any member of the board of directors may waive notice of any meeting. The attendance by a member of the board of directors at a meeting shall constitute a waiver of notice of such meeting, except where a member of the board of directors attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 4. Quorum. Fifty percent (50%) of the number of the members of the board of directors fixed by these Bylaws shall constitute a quorum for the transaction of business at any meeting of the members of the board of directors.

Section 5. Manner of Acting. Except as otherwise provided in these Bylaws, the act of the majority of the members of the board of directors present at a meeting at which a quorum is present shall be the act of the board of directors.

Section 6. Informal Action by Members of the Board of Directors. Action taken by a majority of the members of the board of directors without a meeting is nevertheless Board action if written consent to the action in question is signed by a majority of the members of the board of directors and filed in the book of records of the Association (and all members are notified), whether done before or after the action so taken.

Section 7. Committees of the Board. The board of directors may establish either standing or ad hoc committees of the members to assist it in its work. Such committees shall be chaired by a member of the board of directors.

## ARTICLE VIII OFFICERS

Section 1. Designation. The officers of the Association shall consist of a President, a Vice President, a Secretary, and a Treasurer, and such other officers as the membership may from time to time elect. The offices of Secretary and Treasurer may be held by the same person; otherwise, no other two (2) offices may be held by the same person.

Section 2. Election and Term. The initial officers of the Association shall be elected by the initial members of the board of directors of the Association. Subsequently, the officers of the Association shall be appointed by the board of directors. Members of the board shall be eligible for appointment to serve as officers of the Association. The

officers shall be appointed to one-year terms, and each officer shall hold office until his/her death, disability, resignation or removal, or until the expiration of his/her term and the appointment of his/her successor.

Section 3. President. The President shall be the principal executive officer of the Association and, subject to the control of the board of directors, shall in general supervise and control all of the business and affairs of the Association. He/she shall, when present, preside at all meetings of the members. He/she shall sign, with the Secretary, any deeds, mortgages, bonds, contracts, or other instruments which the board of directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of directors or by these Bylaws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general he/she shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of directors from time to time. The President shall execute any amendments to the Declaration approved by the membership of the Association.

Section 4. Vice President. In the absence of the President or in the event of his/her death, inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President, and shall perform such other duties as from time to time may be assigned to him/her by the President or the board of directors.

Section 5. Secretary. The Secretary shall: (a) keep minutes of the meetings of members, of the Board of directors and of all Executive Committees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Association (if a stamp seal exists), and see that the seal of the Association is affixed to all documents, the execution of which on behalf of the Association under its seal is duly authorized and mandated; (d) be authorized to certify and oversee the recordation of amendments to the Declaration on behalf of the Association; (e) keep a register of the post office address and/or electronic mail addresses of each member which shall be furnished to the Secretary by such member; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him/her by the President or by the board of directors.

Section 6. Treasurer. If the Association is self-managed and chooses not to delegate the handling of Association monies to a professional management company, then there shall be elected a Treasurer of the Association. The Treasurer shall be bonded by a reputable insurance or surety company (if the board of directors so decides) and shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; (b) receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such depositories as shall be selected in accordance with the provisions of Section 4 of

Article IX of these Bylaws; (c) prepare, execute and deliver certificates of Assessments as may be required by the Declaration or by Chapter 47F of the North Carolina General Statutes; and (d) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him/her by the President or by the board of directors.

ARTICLE IX.  
CONTRACTS, LOANS, CHECKS, AND DEPOSITS

Section 1. Contracts. The board of directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on the behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Association and no evidence of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

Section 3. Checks and Drafts. All checks, drafts or other orders for the payment of money, issued in the name of the Association, shall be signed by the President or the Treasurer of the Association; however, it is understood that the board of directors may delegate such signing authority to a property management company that has been contractually retained by the Association. Any such property management company shall be bonded by a reputable insurance or surety company.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such depositories as the board of directors may select.

ARTICLE X  
ADJUDICATORY PANEL

Section 1. Appointment of Adjudicatory Panel. The board of directors shall, not less than annually, appoint an Adjudicatory Panel of not less than three (3) individuals, all of whom shall be residents of the Subdivision; however, during the Period of Declarant Control, the Adjudicatory Panel shall be comprised of one (1) individual, Patrick J. McKee, unless the Declarant shall decide otherwise. Members of the board shall be eligible to serve as members of the Adjudicatory Panel. Members of the Adjudicatory Panel shall be appointed to one-year terms, and each member shall sit until his/her death, disability, resignation or removal, or until the expiration of his/her term and the appointment of his/her successor.

Section 2. Hearings. In the event that a fine is assessed against a Lot owner by the board of directors pursuant to Subsection 2(C) Article VI above, the Adjudicatory Panel shall provide to the Lot owner so fined notice of the violation and an opportunity to

be heard regarding the alleged violation and the assessed fine. If within ten (10) days of receipt of the notice the Lot owner requests in writing a hearing, the Adjudicatory Panel shall hear the matter within twenty (20) days of the date of the written request. A majority of the members of the Adjudicatory Panel shall constitute a quorum for the purpose of conducting a hearing. Following such a hearing, the Adjudicatory Panel shall confii \_\_ iii, deny or modify the fine imposed by the board and shall notify the Lot owner of its decision. The decision of the Adjudicatory Panel with regard to the fine shall be final.

#### ARTICLE XI. INDEMNIFICATION

Any person who at any time serves or has served as an officer, member of the board of directors and/or member of the Adjudicatory Panel of the Association will be indemnified by the Association to the fullest extent permitted by law against (a) reasonable expenses, including attorneys' fees, incurred by him/her in connection with any threatened, pending, or completed civil, criminal, administrative, investigative, or arbitratve action, suit, or proceeding (and any appeal therein), whether or not brought by or on behalf of the Association, seeking to hold him/her liable by reason of the fact that he/she is or was acting in such capacity, and (b) reasonable payments made by him/her in satisfaction of any judgment, money decree, fine, penalty or settlement for which he/she may have become liable in any such action, suit or proceeding.

Upon request for payment, the President of the Association shall promptly call a special meeting of the board of directors to obtain approval to pay the indemnification required by this bylaw. Such approval may be general or confined to specific instances, and shall not be unreasonably withheld. Upon approval by the board of directors, the President shall promptly cause the indemnification to be paid to the requesting party.

Any person who at any time after the adoption of this bylaw serves or has served as an officer, member of the board of directors and/or member of the Adjudicatory Panel of the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this bylaw.

#### ARTICLE XII SECTION 528 STATUS

The Association shall elect and shall be managed in such fashion as to maintain tax-exempt status under Section 528 of the Internal Revenue Code of 1986. The Association shall not carry on any activities prohibited by an Association electing tax-exempt status under Section 528, or any corresponding sections or provisions of any future United States Internal Revenue law.

ARTICLE XIII  
AVAILABILITY OF DOCUMENTS

The Association shall keep records of (i) its governing documents; (ii) its actions (board resolutions, minutes of meetings and similar matters); and (iii) its financial condition (receipts and expenditures affecting its finances, operation and administration; budget; financial statements and similar items). Notwithstanding the foregoing, the Association is not required to maintain records in excess of three (3) years, unless otherwise required under applicable law. The Association documents and all books and records kept on behalf of the Association shall be available for examination and copying by a member or such member's authorized agent during normal business hours and upon reasonable notice to the Association and for a reasonable charge, except for privileged or confidential information.

ARTICLE XIV  
GENERAL PROVISIONS

Section 1. Seal. The corporate seal of the Association shall consist of two concentric circles between which is the name of the Association and in the center of which is inscribed SEAL; and such seal, as impressed or drawn on the margin hereof, is hereby adopted as the corporate seal of the Association.

Section 2. Fiscal Year. The fiscal year of the Association shall be January 1 through December 31, unless otherwise determined by the board of directors.

Section 3. Amendments. Following the expiration of the Period of Declarant Control (as defined in the Declaration), the members of the Association may amend these Bylaws by the vote of at least sixty-seven percent (67%) of all existing Lot owners at any meeting of the membership of the Association, in which a quorum is present, properly held and conducted pursuant to Article V above. During the Period of Declarant Control, the Declarant shall have the unilateral right to amend these Bylaws.

Section 4. Conflicts. In the event of any conflict between the terms and provisions of these Bylaws and the terms and provisions of the Declaration, the terms and provisions of the Declaration shall control.

Section 5. References to Statutes. All references herein to any provision of the North Carolina general statutes, or any other applicable laws, shall be construed to include and apply to any subsequent amendments thereto or codified replacements/ substitutions thereof.

[The Remainder of This Page Intentionally Left Blank]

IN TESTIMONY WHEREOF, the foregoing were adopted as the Bylaws of Cottages at Evergreen Owners Association, Inc. as of the date set forth below.

DECLARANT:

MCKEE HOMES LLC

By: \_\_\_\_\_  
Patrick J. McKee, Member/ Manager

D a t e : W u p 6

[Executed by Declarant during Period of Declarant Control]

EXHIBIT A-1 Attached to Bylaws

(Form of Proxy)

The undersigned hereby irrevocably constitute and appoint \_\_\_\_\_ their attorney-in-fact and proxy for the sole purpose of casting the vote allocated to Lot \_\_\_\_\_, on all matters submitted to vote at that meeting of \*\*\*, to be held on \_\_\_\_\_, 20\_\_\_\_. The undersigned hereby ratify and confirm all such votes cast on behalf of said Lot at that meeting, and certify that they are fully authorized to execute this instrument of proxy on behalf of all owners of any fee interest in said Lot.

This the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Member (Lot owner) or His/ Her Attorney-in-Fact