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CRAVEN County, North Carolina
Sherri B. Richard Register of Deeds

Bk **3536** Pg **56**

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FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LAKE TYLER SUBDIVISION

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY
OF POLITICAL SIGNS.**

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FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LAKE TYLER SUBDIVISION

THIS FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LAKE TYLER SUBDIVISION, a Delaware limited liability company (“Declaration”) is made this _____ day of _____, 2018, by Stars & Stripes 4F, LLC (“Declarant”).

WHEREAS, Gene Dunn Construction Company of New Bern, Inc. (“Developer”) executed a Declaration of Covenants, Conditions and Restrictions and Easements for Lake Tyler Subdivision recorded in Book 2747, Page 334 in the Office of the Register of Deeds of Craven County, North Carolina (as amended and supplemented, the “Original Declaration”); and,

WHEREAS, Declarant is the assignee of the rights of Developer as the declarant under the Original Declaration by virtue of an Assignment of Declarant Rights recorded in Book 3470, Page 216 of the Registry; and,

WHEREAS, Declarant desires to amend and restate the Original Declaration in its entirety and that the provisions as hereinafter set forth shall constitute the sole Declaration for Lake Tyler Subdivision as set forth herein; and,

WHEREAS, Declarant hereby declares that all of the property described in Exhibit A, and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article 1), shall be held, sold, used and conveyed subject to the North Carolina Planned Community Act and to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the desirability of, and which shall run with, the real property subjected to this Declaration. No real property other than the property described on Exhibit A is subject to this Declaration until made subject to this Declaration by Supplemental Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in the property described in Exhibit A or any part thereof, their heirs, successors, successors-in-title, and assigns.

Article 1 Definitions.

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 “Act”: Chapter 47F of the General Statutes of North Carolina designated as the North Carolina Planned Community Act.

1.2 “Additional Property”: Any property Declarant may submit to the Declaration pursuant to Article 8.

1.3 “Area of Common Responsibility”: The Common Elements, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract become the responsibility of the Association, including by way of illustration but not limitation, streets rights-of-way.

1.4 “Association”: Lake Tyler Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

1.5 “Association Documents”: Collectively the Articles of Incorporation of the Association, the Bylaws of the Association, this Declaration, any Supplemental Declaration as may be applicable to separate portions of the Property, the Rules and Regulations, the Design Guidelines adopted by the Association, and any resolutions adopted by the Board, all as may be amended, restated and revised from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document.

1.6 “Base Assessment”: Assessments levied on all Lots equally to fund the Common Expenses, provided that: (i) during the Development Period, no Base Assessment shall be imposed on Lots owned by Declarant (ii) Lots owned by Builders are subject to a temporary exemption from Base Assessments as described in Section 9.3 of this Declaration.

1.7 “Benefited Assessment”: Assessments levied under Section 9.7.

1.8 “Board of Directors” or “Board”: The body responsible for administration of the Association selected as provided in the Bylaws.

1.9 “Builder”: Any Person designated by Declarant as a Builder, who purchases one or more Lots for the purpose of constructing Units for resale to consumers in the ordinary course of its business, or who purchases one or more parcels of land within the Property for further subdivision, development, and/or resale in the ordinary course of its business.

1.10 “Business” and “Trade”: Shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

1.11 “Bylaws”: The Bylaws of the Association as they may be amended from time to time.

1.12 “Commercial Property”: Any real property subjected to the terms of this Declaration which is intended for commercial use, whether retail, office, institutional or other non-residential purposes as may be determined by the Declarant in its sole discretion.

1.13 “Common Elements”: All real and personal property in which the Association now or hereafter owns, leases or otherwise holds possessory or use rights for the common use and enjoyment of the Owners, including easements held by the Association for those purposes.

The term shall include, without limitation, any Amenities (hereinafter defined) (if constructed by Declarant and transferred to the Association as provided in Section 2.2), landscape medians, roads, cul-de-sacs, lakes, ponds, rivers, streams, wetlands and preservation areas. The term shall also include any and all permits and other such intangible property.

Notwithstanding this definition, to the extent that the provisions of the Act apply to “Common Elements”, including, without limitation, the provisions of Section 47F-3-112, those provisions shall apply only to the “Common Elements” as defined in the Act.

1.14 “Common Expenses”: Any and all expenditures made by or financial liabilities and obligations of the Association, together with any allocations to reserves.

1.15 “Community-Wide Standard”: The standard of conduct, upkeep, or other activity generally prevailing throughout the Property. The standard shall be established initially by Declarant and thereafter shall be determined by the Board of Directors and the Architectural Committee. The standard may contain both objective and subjective elements, and may evolve and change as development progresses and as the needs and desires within the Property change.

1.16 “Covenant to Share Costs”: Any declaration of easements and covenant to share costs executed by Declarant and recorded in the Register of Deeds which creates easements for the benefit of the Association and the present and future owners of the real property subject to the Declaration and which obligates the Association and such owners to share the costs of maintaining certain property described therein.

1.17 “Declarant”: Stars & Stripes 4F, LLC, or any successor, successor-in-title, or assignee thereof, which has or takes title to all or any portion of the Property described on Exhibit A or any Additional Property made subject to this Declaration for the purpose of development and/or resale in the ordinary course of business and who is designated as Declarant in an instrument executed by the immediately preceding Declarant and recorded in the Register of Deeds in accordance with the provisions of the Act. There may be multiple Declarants in the event that the Declarant elects to assign a portion of the Declarant rights hereunder to another party.

1.18 “Declaration”: This Declaration, any Supplemental Declaration as may be applicable to separate portions of the Property, any exhibit, schedule or amendment thereto, all as may be amended, restated and revised from time to time.

1.19 “Design Guidelines”: The architectural, design, development, and other guidelines, standards, controls, and procedures including but not limited to, application and review procedures, adopted pursuant to Article 10 and applicable to the Property.

1.20 “Development Period”: The period ending on the earliest of (a) fifty (50) years from the date this Declaration is recorded in the Register of Deeds; provided, that if Declarant is delayed in the improvement and development of the Property as a result of a sewer, water or building permit moratorium or other cause or event beyond Declarant’s control, then the aforesaid period shall be extended for the length of the delay plus an additional two (2) years upon written notice to the Association of such extension; (b) the date upon which the Declarant(s) no longer owns a Lot in the Property, nor any Additional Property; provided,

however, that the Development Period shall be extended in the event Declarant subsequently acquires Property or Additional Property; or (c) the date specified by Declarant in a recorded instrument executed by all then current Declarants that the Development Period is to terminate on that date so stated.

1.21 “Existing Member”: A Member who owns a Lot as of the date of this Declaration.

1.22 “Improved Lot”: A Lot containing a Unit for which a Certificate of Occupancy (temporary, conditional or final) has been issued.

1.23 “Landscaping”: Living plants, shrubs, trees, vegetation, ground coverings (including grass and sod) and appurtenant live/growing vegetative materials, straw, mulches, composting materials, pools (other than swimming pools), ornamental ponds, ornamental structures and any other living or non-living material or structure reasonably constituting a part of any or all of the foregoing installed upon a Lot.

1.24 “Limited Common Elements”: A portion of the Common Elements allocated by this Declaration or by operation of law for the exclusive use of one (1) or more but fewer than all of the Lots. Limited Common Elements may also be shown on any map of the Project recorded in the Register of Deeds.

1.25 “Lot”: A portion of the Property, whether improved or unimproved, other than Common Elements and property dedicated to the public, which may be independently owned and conveyed and which is separately identified on a map of all or any portion of the Property recorded in the Register of Deeds. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Unit, thereon. In the case of any structure containing multiple Units, each Unit shall be deemed to be a separate Lot.

For all purposes set forth in the Association Documents, a Lot comes into existence on the later of recordation in the Register of Deeds of (i) a map or plat depicting said Lot or (ii) a Supplemental Declaration defining and subjecting the proposed Lot to the same and this Declaration.

1.26 “Master Plan”: The master plan for the development of the Property filed or which may be filed with the City of New Bern, North Carolina, as it may be amended, updated, or supplemented from time to time in the sole discretion of the Declarant. The Master Plan may also include subsequent plans approved by the City of New Bern, North Carolina, for the development of any Additional Property which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property from the Master Plan bar its later annexation into this community in accordance with Article 8.

1.27 “Member”: A Person having membership in the Association consistent with Section 3.2 of this Declaration.

1.28 “Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.29 “Mortgagee”: A beneficiary or holder of a Mortgage.

1.30 “Owner”: One or more Persons who hold the record title to any Lot, except Persons holding an interest merely as security for the performance of an obligation in which case the equitable owner will be considered the Owner.

1.31 “Person”: A natural person, corporation, limited liability company, partnership, trustee, or any other legal entity.

1.32 “Private Amenities”: Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of or within the Property designated by Declarant and which are owned and operated, in whole or in part, by Persons other than the Association for recreational or other purposes on a club membership, daily fee, use fee, public, private basis or otherwise. Declarant is under no obligation and specifically disclaims any obligation to provide any Private Amenities.

1.33 “Project”: The Lake Tyler Subdivision which is located on the Property.

1.34 “Property”: The real property described in Exhibit A, together with such additional property as is subjected to this Declaration in accordance with Article 8.

1.35 “Register of Deeds”: The office of the Register of Deeds of Craven County, North Carolina.

1.36 “Special Assessment”: Assessments levied under Section 9.6.

1.37 “Subsidiary Association”: In addition to the Association, there may be created subsidiary associations associated with distinct neighborhoods or sections of the Property. Owners of Lots or Units who are members of any Subsidiary Association within the Property shall also be Members of the Association and shall be entitled to all rights and subject to all obligations granted and created pursuant to the Association except as may be set forth in the Supplemental Declaration subjecting the real property to this Declaration.

1.38 “Supplemental Declaration”: An amendment or supplement to this Declaration filed pursuant to Article 8 which subjects additional property to this Declaration and identifies the Common Elements within the additional property, if any, and/or imposes, expressly or by reference, different or additional restrictions and obligations on the land described therein. The restrictions imposed by any Supplemental Declaration do not have to be the same as set forth herein as determined in the sole discretion of the Declarant.

1.39 “Unimproved Lot”: A Lot other than an Improved Lot.

1.40 “Unit”: Any building or structure or portion of a building or structure, including by way of illustration but not limitation, commercial building, condominium units, cluster homes, patio or zero lot line homes, and single family detached houses.

1.41 “Upkeep”: Care, inspection, maintenance, operation, irrigation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

1.42 “Use Restrictions”: The rules and use restrictions are more fully defined as set forth in Article 11.

1.43 “Utility Company”: A public or private company or entity duly licensed and authorized by the North Carolina Utilities Commission to provide utility services within a specified franchise area and any entity providing utility services on behalf of a body politic, municipality or other governmental body or entity.

Article 2 Property Rights.

2.1 Common Elements. Every Owner shall have a right and nonexclusive easement, in common with all other Owners, of use, access, and enjoyment in and to the Common Elements, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) All applicable provisions of the Act;
- (d) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Elements, including rules restricting use of Amenities (as hereinafter defined) within the Common Elements to Owners, their families, lessees and guests, and rules limiting the number of occupants and guests who may use the Common Elements;
- (e) The right of the Association to dedicate or transfer all or any part of the Common Elements to governmental entities pursuant to Section 4.3;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission, or other fees for the use of any Amenities or other improvements situated upon the Common Elements;
- (g) The right of the Board to permit use of any Amenities or Common Elements by Persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (h) The right of the Board to create, enter agreements with, grant easements to and transfer portions of the Common Elements to tax-exempt organizations under Section 4.9;
- (i) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred by the Association;

(j) The right of the Association to convey portions of the Common Elements, including the right to convey or encumber real property Common Elements as provided in the Act;

(k) The right of the Board to suspend the services provided to a Lot or privilege of an Owner to use Amenities within the Common Elements; and

(l) The right of the Association to rent or lease Amenities within the Common Elements on a short-term basis to any Owner for the exclusive use of such Owner and such Owner's family and guests.

2.2 Amenities. Declarant may, but has no obligation to, construct any amenities or facilities ("Amenities") within the Common Elements. If constructed, the Amenities (excluding "Private Amenities") will be provided for the benefit of Owners (other than Builders), their families, tenants and guests within the Property described on Exhibit A and, at the sole option of Declarant, to Owners of Units within Additional Property submitted to this Declaration, their families, tenants and guests. **The Amenities will also be provided for the benefit of Owners of Unimproved Lots, and their immediate families, but shall not be available to guests, employees and contractors of Owners of Unimproved Lots.** The Amenities shall be maintained as part of the Common Elements out of assessments imposed on all Owners who have the right of access to and the use of the present Amenities in accordance with the provisions of Section 2.1. The Association may impose reasonable rules and regulations regarding the use of any such Amenities to insure accessibility, safety, harmony and preservation of any such Amenities. The Amenities shall be maintained as part of the Common Elements. The cost of the management, operation, maintenance, repair, servicing, replacement and renewal of the Amenities shall be deemed Common Expenses as to all Owners who have the right of access to and use of said Amenities.

Article 3 Association Function, Membership and Voting Rights.

3.1 Function of Association. The Association shall be the entity responsible for management, upkeep, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of the Association Documents. At its election, the Association may but is not obligated to accept delegation of specific or comprehensive authority from a Subsidiary Association, which delegation and acceptance shall be evidenced in an appropriate document of record. The Association shall perform its functions in accordance with the Association Documents and North Carolina law. The Association shall have all powers reasonably necessary to perform its functions and obligations described in the Association Documents including, but not limited to, all powers set forth in N.C. Gen. Stat. Chapter 55A and the Act.

3.2 Membership. Every Owner shall be a Member of the Association. If a Lot is owned by more than one Person, all co-Owners shall be Members and share the privileges of such membership, subject to reasonable Board regulation, such reasonable fees as may be established under Section 2.1, and the restrictions on voting set forth in Section 3.3 and in the Bylaws. All such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is a corporation,

partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3 Voting.

(a) All Owners shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 3.2; provided, there shall be only one (1) vote per Lot.

(b) Declarant may, by Supplemental Declaration, create additional classes of membership for the Owners of Lots, townhomes, condominium units and Commercial Properties within any additional property made subject to this Declaration, with such rights, privileges and obligations as may be specified in such Supplemental Declaration in recognition of the different character and intended use of the property subject to such Supplemental Declaration. Declarant may allocate votes for Additional Property included in the Supplemental Declaration as Declarant, in its sole discretion, deems appropriate.

(c) Except as otherwise specified in this Declaration or the Bylaws or as required by law, the vote for each Lot owned by a Member shall be exercised by the Owner. In any situation in which there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such notice to the Association, the Lot vote shall be suspended if more than one Person seeks to exercise it. If the co-Owners are unable to agree on how the vote should be cast, it will be disregarded.

Article 4 Association Rights, Obligations and Services.

4.1 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the Property, personal property and leasehold and other property interests. Upon each and every such conveyance, such property shall be accepted by the Association and thereafter shall be maintained as Common Elements by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed and/or Association Documents.

4.2 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Association Documents or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in the Association Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.3 Dedication of Common Elements. During the Development Period, the Declarant, and thereafter the Association may dedicate or grant easements over portions of the Common Elements to any local, state, or federal governmental entity or any Utility Company.

4.4 Disclaimer of Liability. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote the health, safety and welfare of Owners and occupants of any Lot.

(a) Notwithstanding anything contained herein or in the Association Documents or the Act, neither the Association, the Board, the management company of the Association, nor Declarant(s) shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Property, including all Amenities.

(b) Neither the Association, the Board, the management company of the Association, nor Declarant(s) shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Property. Each Owner and occupant of a Lot and each family member, tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that the Association, the Board, the management company of the Association, Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any family member, tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

(c) Each Owner and occupant, and each family member, tenant, guest and invitee of any Owner or occupant acknowledges that the Property is located in the vicinity of wetland and swamp areas and that such areas may contain an abundance of wildlife, including, but not limited to, deer, skunks, opossums, snakes, alligators, reptiles, rodents and pests. Neither the Association, the Board, the management company of the Association, Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Property. Each Owner and occupant of a Lot and each family member, tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and further acknowledges that the Association, the Board, the management company of the Association, if any, Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any family member, tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife.

Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, to engage in wildlife and fishery management plans and practices on the Property to the extent that such practices are permitted by applicable state and federal law. For the purpose of illustration and without any limitations, this right includes the right to manage and control any populations of deer, raccoons, and other wildlife through a variety of techniques, including organized hunting, shooting and trapping. Declarant hereby reserves the right to assign these management rights to the Association. After the expiration of the Development Period, the rights contained in this Section 4.4(c) shall transfer to the Board of Directors.

(d) No provision of the Association Documents shall be interpreted as creating a duty of the Association, the Board, the management company of the Association, nor Declarants to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, the management company of the Association, if any, Declarant and any successor Declarant, their directors, officers, committee and Board members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

4.5 Safety.

(a) The Association may, but is not obligated to, maintain or support certain activities within the Property designed to provide for the safety of the Members. All Owners and occupants of any Lot, and all family members, tenants, guests, and invitees of any Owner, acknowledge and understand that the Association, its Board and committees, the management company of the Association, and Declarant(s) are not insurers or guarantors of safety within the Property. Neither the Association, any management company of the Association, nor any Declarant shall be held liable for any loss or damage for failure to provide adequate safety or ineffectiveness of safety measures undertaken. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants of its Lot that the Association, its Board and committees, and Declarant(s) are not guarantors of security or safety and that each person using Property within the Project assumes all risks of personal injury and loss or damage to property including Lots, improvements thereon and the contents thereof, resulting from acts of third parties.

(b) The Declarant may, but is not obligated to, construct or install entryway gates at one or more of the entries to the development. In the event that Declarant elects to install any such gates, whether or not said gates are located on the Common Elements, said gates shall be operated and maintained by the Declarant or the Association in the Declarant's discretion, and the cost of said maintenance and operation shall be a Common Expense of the Association, or if only serving a portion of the community, a Benefitted Assessment against those Lots served by said gate.

4.6 Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense, or assessed against the Lot as a Benefitted Assessment as deemed appropriate by the sole discretion of the Board. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, water for potable or

irrigation use, sanitary sewer services, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, subject to the terms of the contracts for facilities or services, but without the consent of the Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. This paragraph shall be specifically construed to allow the Association to enter into a contract for the overall management of the Association with any individual or corporation. The Association or its managing agent shall also be permitted to provide services to any Subsidiary Association or Owners where it deems it to be in the interest of the Association to do so.

4.7 Change of Use of Common Elements. Upon (a) adoption of a resolution by the Board stating that, in the Board's opinion, a service provided by the Association pursuant to Section 4.6 or the then present use of a designated part of the Common Elements is no longer in the best interest of the Owners or is no longer necessary or appropriate for the purposes intended, and (b) the consent of Declarant during the Development Period, the Board shall have the power and right to terminate such service or change the use of any Common Elements (and, in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided that any such new use (i) shall be for the benefit of the Owners, (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Elements, and (iii) shall be consistent with the then effective Master Plan.

4.8 View Impairment. Neither Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot, from adjacent Lots will be preserved without impairment. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

4.9 Relationship with Tax-Exempt Organizations. During the Development Period, the Declarant and thereafter the Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Elements to, or transfer portions of the Common Elements to non-profit, tax-exempt organizations, including but not limited to organizations that provide facilities or services designed to meet the physical or social needs of a particular group or class of persons, for the benefit of the Property, the Association, its Members and residents. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as but not limited to entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

4.10 Lakes, Ponds, and Other Water Features. Neither the Declarant, the Association, nor any of their successors, assigns, officers, directors, committee members, employees, management agents, contractors or subcontractors shall be liable or responsible for maintaining or assuring the water quality or level in any lake, pond, canal, creek, stream, waterfall, water feature, or other water body adjacent to or within the Property, except as such responsibility may

be specifically imposed by an applicable governmental or quasi-governmental agency or authority. Furthermore, all Owners and other users of any portion of the Property located adjacent to or having a view of any of the aforesaid water bodies shall be deemed, by virtue of their acceptance of a deed to, or use of, such portion of the Property, to have agreed to hold harmless all of the parties listed above for any and all changes in the quality and level of the water in such water bodies.

Article 5 Maintenance.

5.1 Association's Responsibility.

(a) The Association shall provide Upkeep for the Area of Common Responsibility, which shall include, but need not be limited to:

- (i) all Common Elements and all improvements upon the Common Elements;
- (ii) all Landscaping, parks, signage, structures, and improvements, including any bike, pedestrian and equestrian pathways and trails, situated upon the Common Elements, and also including the grass and other vegetation located within the private street rights of way included in the Common Elements;
- (iii) all private streets, including any asphalt repairs thereto, situated upon the Common Elements or utilized by the Association and Owners for access;
- (iv) all walls and fences constructed by Declarant on any Lots which serve as perimeter walls for the Property or which separate any Lot from Common Elements or a Private Amenities which are not to be maintained by any Subsidiary Association;
- (v) Landscaping, sidewalks, street lights, irrigation systems, and signage within public streets or other rights-of-way abutting the Property which are not to be maintained by any Subsidiary Association;
- (vi) all entry features, signs, and gates, including Landscaping and irrigation for the entry feature areas, and the provision of electrical services to said areas for the benefit of the Project;
- (vii) Landscaping within any public utility easements within the Common Elements and other easements within the Common Elements (subject to the terms of any easement agreement relating thereto);
- (viii) any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, any plat of any portion of the Property, or any contract or agreement for maintenance thereof entered into by the Association;

(ix) any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members and identified by written notice from Declarant to the Association until Declarant revokes such privilege of use and enjoyment by written notice to the Association. Said property and facilities may include without limitation roads, streets, or other access ways; and

(x) without limiting any of the foregoing, all maintenance of the water body known as Lake Tyler (the "Lake"), and its drainage and tributaries, including bulkheads, docks, ramps, dams, landscaping and any amenities which may be provided in or adjoining the Lake.

(b) The Association shall also have the right and power, but not the obligation, to take such actions, in accordance with appropriate law, and adopt such rules as may be necessary for control, relocation, management, and extermination of wildlife, including but not limited to, deer, skunks, opossums, snakes, alligators, reptiles, rodents, and pests, within the Area of Common Responsibility.

(c) The Association may also maintain and improve other property which it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law.

(d) Except as otherwise specifically provided herein, all costs for Upkeep of the Area of Common Responsibility shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for, such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Lot (with the exception of those areas designated as common maintenance responsibility on the recorded maps), including any Unit, and all other structures, rain water collection systems and other Private Stormwater Management Facilities, parking areas, Landscaping, and other improvements upon the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 9.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Standard of Performance. All Upkeep shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, as determined by the Board.

Portions of the Property are environmentally sensitive and/or may provide greater aesthetic value than other portions of the Property. The Board may establish a higher Community-Wide Standard for such areas and require additional Upkeep for such areas to reflect the nature of such property, including without limitation standards regarding vegetation, trash disposal, landscaping and site maintenance.

Notwithstanding anything to the contrary contained herein, neither the Association nor any Owner shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been grossly negligent in the performance of its maintenance responsibilities.

Article 6 Insurance and Casualty Losses.

6.1 Authority to Purchase - Notice.

(a) The Board shall have the power on behalf of the Association to (1) purchase insurance policies relating to the Common Elements, (2) adjust all claims arising under such policies and (3) execute and deliver releases upon payment of claims. The cost of all insurance policies purchased by the Board relating to the Common Elements shall be a Common Expense. The Board, the managing agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at an unreasonable cost. Exclusive authority to negotiate losses under such policies shall be vested in the Board or with its authorized representative. The Board shall promptly notify the members of material adverse changes in, or termination of, insurance coverages obtained on behalf of the Association.

(b) Each such policy shall provide that:

(i) The insured waives any right to claim by way of subrogation against the Declarant, the Association, the Board, the managing agent, any member or the Owners and their respective households, guests, employees, customers, tenants, agents and invitees;

(ii) Such policy shall not be cancelled, invalidated or suspended due to the conduct of any member or any Owner, or such Owner's tenant or such Owner's (or tenant's) household, guests, employees, customers, agents and invitees, or of any member, Officer or employee of the Board or the managing agent without a prior demand in writing that the Board or the managing agent cure the defect and neither shall have so cured such defect within sixty (60) days after such demand; and

(iii) Such policy may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to the Board or the managing agent.

(c) All policies of insurance shall be written by reputable companies licensed or qualified to do business in North Carolina.

(d) The deductible (if any) on any insurance policy purchased by the Board shall be a Common Expense; provided, however, that the Association may assess any deductible amount necessitated by the act, misuse or neglect of an Owner, or such Owner's tenant or such Owner's (or tenant's) household, guests, employees, customers, agents or invitees against such Owner.

6.2 Physical Damage Insurance.

(a) To the extent reasonably available, the Board shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, sprinkler leakage (if applicable), cost of demolition, debris removal, and water damage endorsements, insuring any improvements located on the Common Elements, together with all service machinery contained or located therein and covering the interests of the Association, in an amount equal to one hundred percent (100%) of the then current replacement cost of any improvements located on the Common Elements (exclusive of the land, excavations, foundation and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined periodically by the Board with the assistance of the insurance company affording such coverage). The Board shall also obtain and maintain appropriate coverage on all personal property and real estate other than the Common Elements owned by the Association.

(b) Each such policy shall also provide:

(i) a waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made by the insured not to do so;

(ii) the following endorsements (or equivalent): (1) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Owner or their agents or any member when such act or neglect is not within the control of the insured or the Owners collectively, nor by any failure of the insured, any members or the Owners collectively, to comply with any warranty or condition with regard to any portion of the Property over which the insured, the members or the Owners collectively, have no control); (2) "cost of demolition"; (3) "contingent liability from operation of building laws or codes"; (4) "increased cost of construction"; (5) "replacement cost"; (6) "Law and ordinance"; and (7) "agreed amount" or elimination of coinsurance clause;

(iii) that any "no other insurance" clause expressly exclude individual members' and Owners' policies from its operation of that the physical damage policy purchased by the Board shall be deemed primary coverage and any individual members' or Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their Mortgagees, unless otherwise required by law; and

(iv) such deductibles as to loss, but not coinsurance features, as the Board in its sole discretion deems prudent and economical.

6.3 Liability Insurance. The Board shall obtain and maintain comprehensive general liability, broad form endorsement (including libel, slander, false arrest and invasion of privacy coverage) and physical injury and property damage liability insurance in such limits as the Board may from time to time determine, insuring each director and officer, the managing agent and the employees and volunteers of the Association against any liability to the public or to any member or any Owner or such Owner's tenant and such Owner's (or tenant's) household, guests, employees, customers, agents and invitees arising out of, or incident to the ownership or care, custody, control and use of the Common Elements or legal liability arising out of employment contracts of the Association. Such insurance shall be issued on a comprehensive liability basis and shall contain: (1) a cross-liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another named insured; (2) hired and non-owned vehicle coverage; (3) host liquor liability coverage with respect to events sponsored by the Association; (4) deletion of the normal products exclusion with respect to events sponsored by the Association; and (5) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to an Owner or member because of negligent acts of the Association or of another Owner or member. The Board shall review such limits periodically, but in no event shall such insurance be less than One Million and No/100 Dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than Three Million and No/100 Dollars (\$3,000,000.00).

6.4 Other Insurance. The Board may obtain and maintain such other insurance: (i) as the Board may determine advisable, which shall include, without limitation, officer and director liability insurance and fidelity insurance and bonds; or (ii) as may be required with respect to the Additional Property made subject to this Declaration by any Supplemental Declaration adding such Additional Property.

6.5 Separate Insurance on Lots.

(a) Each Owner shall have the right, but no obligation, to obtain insurance for such member's or Owner's benefit, at such member's or Owner's expense, covering the improvements located on such Owner's Lot or the Lot owned or maintained by such member. No member or Owner shall acquire or maintain insurance coverage on the Common Elements insured by the Association so as: (i) to decrease the amount which the Board may realize under any insurance policy maintained by the Board; (ii) to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by a member or Owner; or (iii) in violation of any declaration of covenants encumbering such Owner's Lot. No member or Owner shall obtain separate insurance policies on the Common Elements owned by the Association.

(b) Owners may be required to obtain certain insurance coverages with respect to Additional Property that is added to the Property pursuant to Supplemental Declarations or Subsidiary Association documents.

Article 7 No Partition.

Except as permitted in this Declaration, the Common Elements shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

Article 8 Annexation and Withdrawal of Property.

8.1 Annexation Without Approval of Membership.

(a) During the Development Period, Declarant may unilaterally subject any real property described in Exhibit B and any other real property within one (1) mile of the boundaries of the real property described in Exhibit A and Exhibit B to the provisions of this Declaration as Additional Property. Nothing in this Declaration or otherwise shall be construed to require Declarant, or any successor, to develop any Additional Property in any manner whatsoever. Nothing in this Declaration or otherwise shall be construed to encumber any real property other than the real property described on Exhibit A unless and until any Additional Property is made subject to this Declaration by a Declarant, as evidenced by an executed and recorded Supplemental Declaration. Declarant's rights hereunder expressly include the right to annex Commercial Property, property to be used for multifamily use, townhome and condominium development, patio homes and any other development or usage permitted by applicable law. Such Additional Property may be subject to such portions of this Declaration and/or such terms and conditions as Declarant, in its sole discretion, may determine which may include alternative architectural review, voting and assessment provisions and procedures.

(b) Declarant may transfer or assign this right to annex property absolutely in its entirety, or with regard to specific property, and may assign this right to one (1) or more parties as deemed appropriate by Declarant.

(c) Such annexation shall be accomplished by filing a Supplemental Declaration in the Register of Deeds describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the recording of such Supplemental Declaration in the Register of Deeds unless otherwise provided therein.

8.2 Annexation with Approval of Membership. The Association or Declarant may subject any Additional Property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Owners representing sixty-seven percent (67%) of the votes of the Association represented at a meeting duly called for such purpose provided that such annexation shall require the consent of Declarant during the Development Period.

Such annexation shall be accomplished by recording a Supplemental Declaration in the Register of Deeds describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon the recording unless otherwise provided therein.

8.3 Withdrawal of Property. Declarant reserves the right to amend this Declaration without prior notice and without the consent of any Person, for the purpose of removing property then owned by Declarant, its affiliates, or the Association from the coverage of this Declaration. Furthermore, Declarant may withdraw any real property from the coverage of this Declaration without prior notice and without consent of any Person other than the Owner of the withdrawn property, but with the written consent of the fee simple owner of the real property to be withdrawn.

8.4 Additional Covenants and Easements. Declarant may unilaterally subject any portion of the Property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property and shall require the written consent of the owner(s) of such property, if other than Declarant.

8.5 Amendment. This Article shall not be amended without the prior written consent of Declarant during the Development Period.

8.6 Additional Members. Any property made subject to this Declaration pursuant to the provisions of this Declaration shall be subject to all conditions and privileges of the Association and Owners of any such annexed property shall be members of the Association.

Article 9 Assessments.

9.1 Creation of Assessments. Subject to the limitations described in Sections 9.2 and 9.3, the Association shall levy assessments against each Lot for Common Expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 9.6; and (c) Benefited Assessments as described in Section 9.7. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Lot within any portion of the Property, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Association (not to exceed the highest rate allowed by North Carolina law), late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is levied until paid, as more particularly provided in Section 9.8. Each such assessment, together with interest, late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment was levied. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance.

Assessments shall be paid in such manner and by such dates as the Board may establish. Unless the Board otherwise provides, the Base Assessment for each Lot shall be due

and payable in advance each year on the first day of the fiscal year of the Association. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon request by an Owner, furnish to any Owner a certificate in writing signed by an officer of the Association or authorized community manager setting forth whether assessments for such Owner's Lot have been paid and any delinquent amount. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself or herself from liability for assessments, by non-use of Common Elements, abandonment of his or her Lot or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it or for inconvenience or discomfort arising from repairs or improvements or other action taken by it.

9.2 Declarant's Obligation for Assessments. The Declarant shall have no obligation for assessments during the Development Period. During the Development Period, Declarant may, at Declarant's sole election, advance to the Association the shortage for any fiscal year or any portion thereof. The "shortage" shall be the difference between:

(a) the amount of all income and revenue of any kind received by the Association, including but not limited to, assessments collected on all other Lots, use fees, and income from all other sources, and

(b) the amount of all actual expenditures incurred by the Association during the fiscal year, including any reserve contributions for such year, and excluding all non-cash expenses such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds. Calculation of the shortage shall be performed on a cash basis of accounting.

In the event that the Declarant elects to advance to the Association the shortage or any portion thereof for any fiscal year during the Development Period, such advances made by the Declarant shall be deemed a loan from the Declarant to the Association which shall bear interest as provided by law and which shall be payable upon demand. At the request of the Declarant, the Association shall execute a promissory note evidencing the loan.

The Declarant's obligation to pay assessments may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by any combination of these.

9.3 Builders Obligations for Assessments. Any Lot conveyed by Declarant to Builders shall be exempt from Base Assessments until such time as the Lot is conveyed by the Builder to an Owner who is not another Builder or the Declarant.

9.4 Computation of Base Assessment. The Declarant shall establish the initial budget for the Association including the initial Base Assessment for each Lot. Thereafter, not less than fifty (50) days before the beginning of each fiscal year, the Board shall prepare and adopt a budget covering the Common Expenses estimated to be incurred during the coming year. The budget may include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 9.5, but shall not include expenses incurred during the Development Period for initial development, or installation of infrastructure, original capital improvements, or other original construction costs unless approved by Owners representing a majority of the total votes of the Association and Declarant. In determining the budget, the Board, in its sole discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under Section 9.7 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

Within thirty (30) days after adoption of any proposed budget by the Board, the Board shall provide to all Owners a summary of the budget and notice of a meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary of the budget and notice of the meeting. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless, at that meeting, sixty-seven percent (67%) or more of all the Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

The Base Assessment for the fiscal year shall be determined based upon the budget adopted by the Board and ratified by the Owners. The amount of Base Assessment shall be levied equally against all Lots, subject to the provisions of Section 9.7.

9.5 Reserve Budget and Special Reserve Assessment. The Board may prepare, on an annual basis, reserve budgets for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. Such reserve budgets may also anticipate making additional capital improvements and purchasing additional capital assets. The Board shall include in the Base Assessments reserve contributions in amounts sufficient to meet these projected needs, if any.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes. So long as Declarant owns any portion of the Property or has the right to annex property pursuant to Section 8.1, neither the Association nor the Board shall adopt, modify, limit or expand such policies without Declarant's prior written consent.

9.6 Special Assessments. In addition to other authorized assessments, the Board may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess

of those budgeted. Such Special Assessments shall be approved at a meeting of the Board and shall become effective upon approval by the Board provided that Declarant may disapprove such Special Assessments during the Development Period. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.7 Benefited Assessments. The Board may levy Benefited Assessments against particular Lots for expenses incurred or to be incurred by the Association, as follows:

(a) to cover the costs, including overhead and administrative costs, of Upkeep and replacement of any Limited Common Elements;

(b) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, Landscape maintenance, caretaker service, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(c) to cover costs incurred in bringing the Lot into compliance with the terms of the Association Documents and the Act or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their family members, tenants, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying a Benefited Assessment under this subsection (c);

(d) to recover costs incurred as a result of an Owner's failure to comply with the Permit; and

(e) for a violation of the Association Documents by an Owner and the cost of enforcement of the same.

9.8 Date of Commencement of Assessments. Subject to the provisions of Sections 9.2 and 9.3, the obligation to pay assessments shall commence as to each Lot on the first day of the month following (a) the date the Lot is made subject to this Declaration, or (b) the date the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessments against each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

The Board may delay, reduce, abate or otherwise alter the obligation of Existing Members to pay assessments as it, in its sole discretion, deems appropriate.

9.9 Lien for Assessments. All assessments authorized in this Article shall constitute a lien against the Lot against which they are levied, as provided in N.C. Gen. Stat. § 47F-3-116, until paid unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of interest (subject to the limitations of North Carolina law), late charges, and costs of collection (including attorneys' fees, lien fees and administrative costs). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record

(meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when any assessment or other charge is delinquent, by suit, judgment, and foreclosure.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, a Mortgagee holding a first Mortgage of record or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 9.7, including such acquirer, its successors and assigns.

9.10 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

9.11 Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) all Common Elements;
- (b) all property dedicated to and accepted by any governmental authority or Utility Company; and
- (c) all property owned by the Declarant during the Development Period.

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for Section 501(c) status under the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

9.12 Working Capital Fund. Upon the initial conveyance of a Lot by a Builder or Declarant to an Owner other than a Builder or Declarant, and at each transfer by deed thereafter, the new Owner shall contribute to the Association a sum as determined from time to time by the Board. In the absence of a Board action designating an alternative amount, the amount shall be equal to the current annual Base Assessment payable at the closing of said Lot, said sum to be paid to the Association. The sum is not an advance payment of any installment of the annual

Assessment, but shall be utilized to establish the initial working capital fund for the Association. Such sum may be utilized for Association expenditures at the discretion of the Board, and also may be utilized to reimburse Declarant for expenses incurred for the benefit of the Association by Declarant.

Article 10 Architectural and Design Standards.

10.1 General. No improvements (including staking, clearing, excavation, grading and other site work), exterior alteration of existing improvements (including painting), placement or posting of any object or thing on the exterior of any Lot, Unit, other structure or the Common Elements (e.g., signs, antennae, clotheslines, playground equipment, temporarily or permanently installed basketball goals, pools, propane tanks, lighting, temporary structures, and artificial vegetation), planting or removal of Landscaping (including without limitation any tree removal), or installation or removal of an irrigation system shall take place except in compliance with this Article, this Declaration, including the Use Restrictions, and the Design Guidelines and with the approval of the appropriate committee under Section 10.2.

Any Owner may remodel, paint or redecorate the interior of structures, including the Unit on his or her Lot, without approval. However, modification of the exterior and modifications to the interior of screened porches, patios, and similar portions of a Lot visible from other Lots, Units, Common Elements or streets (public or private) within the Property shall be subject to this Article and approval as set forth below.

This Article shall not apply to the activities of Declarant, or to improvements to the Common Elements by or on behalf of the Association.

This Article may not be amended during the Development Period or without Declarant's written consent so long as Declarant owns any Private Amenities.

10.2 Architectural and Design Review.

(a) New Construction. Declarant shall have exclusive authority to administer and enforce architectural standards under this Article and to review and act upon all applications for original construction within the Property until Declarant explicitly relinquishes that authority. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board may, at its option, either create and appoint an Architectural Committee ("AC") or assign such duties to the MC (as defined below). The AC, if established, shall consist of at least three (3), but not more than five (5), Persons who shall serve and may be removed in the Board's discretion. The AC shall have no rights or authority until Declarant's authority under this Article is surrendered.

(b) Modifications. The Board shall establish a Modifications Committee ("MC") which shall consist of at least three (3), but not more than nine (9), Persons who shall be appointed and shall serve at the discretion of the Board. The MC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures on Lots or containing Units and the adjacent open space. Declarant shall have the right to disapprove any action taken by the MC which Declarant determines, in its sole discretion, to be inconsistent

with the Design Guidelines. (For purposes of this Article, "Reviewing Body" shall refer to either Declarant, the MC, or the AC, as appropriate under the circumstances.)

(c) Fees. The Reviewing Body may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense. The Reviewing Body may also establish and charge a reasonable impact fee for approved construction to defray the costs and expenses of increased road maintenance required by construction activity. Notwithstanding the foregoing, the Association is explicitly authorized to require a construction bond as set forth in the Design Guidelines and subject to the terms, conditions and procedures in the Design Guidelines.

(d) Security. The Reviewing Body may also require posting of security by any Owner, or such Owner's contractor or builder, to be utilized for the repair of any damage to any Common Elements or providing Upkeep of such Common Elements in excess of normal Upkeep as may occur during the construction of any permitted improvements within the Property. The amount and type of security, as required by the Reviewing Body, may be changed from time to time and does not necessarily have to be consistent as to all Owners, contractors or builders.

10.3 Guidelines and Procedures. Declarant shall prepare Design Guidelines which shall apply to all construction activities within the Property, except as provided in Section 10.1. Declarant shall have sole and full authority to amend the Design Guidelines during the Development Period. Thereafter, the AC, or if the AC is not established, the MC, shall have the authority to amend the Design Guidelines. The Design Guidelines shall not conflict with the terms of the Permit and may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, intended use, the Master Plan, and any other applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern in considering applications for new construction and modifications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewing Body and compliance with the Design Guidelines does not guarantee approval of any application.

Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; Declarant or, upon its formation, the AC, or the MC, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The Association shall make the Design Guidelines available to Owners, builders and contractors who seek to engage in development or construction within the Property and all

such Persons shall conduct their activities in accordance with such Design Guidelines. In Declarant's discretion, such Design Guidelines may be recorded in the Register of Deeds, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the Reviewing Body, unless the Reviewing Body has granted a variance in writing pursuant to Section 10.6. So long as the Reviewing Body has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

10.4 Submission of Plans and Specifications.

(a) No activities within the scope of Section 10.1 shall commence on any Lot until an application for approval of the proposed work has been submitted to and approved by the Reviewing Body. Such application shall be in the form required by the Reviewing Body and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefore and other features of proposed construction, as applicable. The Design Guidelines shall set forth the procedure and any additional information for submission of the Plans.

(b) In reviewing each submission, the Reviewing Body may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. The Reviewing Body may require relocation of native plants within the construction site or the installation of an irrigation system for the landscaping including the natural plant life on the Lot as a condition of approval of any submission.

The Reviewing Body shall advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines, the reasons for such finding, and, if deemed appropriate by the Reviewing Body, suggestions for the curing of such objections. In the event the Reviewing Body fails to advise the submitting party by written notice within the period specified in the Design Guidelines of either the approval or disapproval and suggestions for curing the objections of the committee of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

(c) If construction does not commence on a project for which Plans have been approved within six (6) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Reviewing Body for reconsideration. If construction is not completed on a project for which plans have been approved within the period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

10.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the AC and the MC will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

10.6 Variances. The Reviewing Body may authorize variances in writing from its guidelines and procedures, when unique circumstances dictate such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties and for other reasons deemed appropriate by the Reviewing Body. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the MC may not authorize variances without the written consent of Declarant, as long as it owns any portion of the Property or has a right to annex any property pursuant to Section 8.1, and the AC, if established. Furthermore, notwithstanding the foregoing, the Reviewing Body may not grant a variance that conflicts with the terms and conditions of the Permit.

10.7 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither Declarant, the Association, the Board, the AC nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board, the AC or the MC, nor any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the AC and the MC and their members shall be defended and indemnified by the Association as provided in the Bylaws.

10.8 Enforcement. Any construction, alteration or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from Declarant, the AC, the MC, or the Board, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the property, Lot and/or Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, Declarant, the Association or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as

previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, Declarant or the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Bylaws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefited Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Property, subject to the notice and hearing procedures contained in the Declaration. In such event, neither Declarant, the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this section.

In addition to the foregoing, the Association and Declarant shall have all rights set forth in Article 15 and shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewing Body.

Article 11 Plan of Development, Use Restrictions and Authority to Promulgate Rules and Guidelines.

11.1 Plan of Development. Declarant has established a general plan of development and occupancy for the Property under this Declaration in order to protect all Owners' quality of life and collective interests, the aesthetic and environment quality within the Property, and the vitality of and sense of community within the Property, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the community. This Declaration, including the Use Restrictions described in this Article 12 and the rules and resolutions adopted by the Board or the Members establish affirmative and negative covenants, easements, and restrictions on the Property. The provisions of this Declaration and any rules shall apply to Owners, their family members, occupants, tenants, contractors, builders, agents, employees, guests and invitees of any Lot. Declarant is not required to subject any Additional Property to the provisions set forth below and may set forth alternative use restrictions (including no restrictions) as Declarant, in its sole discretion, deems appropriate.

11.2 Use Restrictions.

(a) Restrictions on Use of Lots

1. Residential Use. Unless designated as commercial, the Lots shall be used only for residential, recreational, and related purposes (which

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may include, without limitation, offices for any community manager retained by the Association, home offices of Owners, or business offices for Declarant or the Association consistent with this Declaration and any Supplemental Declaration), subject to applicable laws, and provided that any Supplemental Declaration or additional covenants imposed on property annexed into the Property may provide for different permitted uses on portions of the Property added in the future and impose standards and restrictions other than those contained in this Declaration, and the Association shall have standing and the power to enforce such standards and restrictions

2. Business and Trade. Use of any Unit for a Business and Trade, garage sale, moving sale, rummage sale, or similar activity is prohibited, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of residents of the Property; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Property which is noticeably greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

3. Leasing. Nothing contained herein shall prohibit the leasing or subleasing of a Lot; provided, however, that:

- (i) The Board may set leasing policies and procedures, including minimum lease terms, submission and approvals and procedures and limits on the maximum number of Units that may be leased.
- (ii) All leases for any Lot shall be in writing signed by the Owner and tenant.
- (iii) All leases shall be in such form, and contain such provisions, as approved by the Board, including without limitation, provisions (a) requiring the tenant to comply with the Association Documents, (b) providing that the failure of any tenant under a lease to comply with the Association Documents shall constitute an event of default under the lease, and (c) providing that the Board may exercise any and all remedies for a default under the Association Documents against the Owner and the tenant.
- (iv) Units may only be leased in their entirety, unless otherwise approved by the Board.

(v) A true executed copy of any lease for a Lot shall be provided to the Association prior to the occupancy by the tenant of such Lot.

The Board may also adopt reasonable rules and regulations regarding leasing which may include the imposition of a fee to the Owner leasing the Lot equal to the costs of administration and ensuring compliance incurred by the Association with the restrictions and rules and regulations relating to leasing.

“Leasing,” for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person other than the Owner, for which the Owner receives, or the tenant provides, any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

Declarant shall be exempt from any leasing limitations or rules and regulations established by the Board.

Leasing of a Unit shall not be considered Business and Trade. This subsection shall not apply to any activity conducted by Declarant with respect to its development and sale of the Property or its use of any Units which it owns within the Property.

The restrictions set forth above are expressly not applicable to the Commercial Properties or other Additional Property to the extent they are exempted from such restrictions in the Supplemental Declaration which subjects the Additional Property to this Declaration.

4. Subdivision. No Owner other than the Declarant may subdivide a Lot into two or more Lots. No Owner may combine two or more Lots without the express prior written consent of the Declarant, until the Declarant relinquishes that right to the Association in writing and thereafter, the consent of the Association. Following any such combination, the assessments allocated to the resulting lot shall be the equivalent of the assessments that would have been levied against the source lots prior to combination. No Owner shall change the boundary lines of any Lot after a subdivision plat including such Lot has been recorded in the Register of Deeds without the express prior written consent of the Declarant, until the Declarant relinquishes that right to the Association in writing and thereafter, the consent of the Association.

5. Improvements. No owner may commence, continue, or complete construction, erection, placement, alteration, or modification of anything, permanently or temporarily, upon a Lot or on the outside portions of the Unit, whether such portion is improved or unimproved, except as specifically authorized in Section 12.2(d)4 and otherwise in strict compliance with the provisions of the Declaration. This shall include, without limitation, signs, basketball hoops, or similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; landscape changes or removals; exterior color changes; and hedges, walls, dog runs, or animal pens. Fences, swing sets, basketball hoops.

docks, piers and similar structures may only be installed after receipt of prior written consent from the Reviewing Body pursuant to Article 10 of the Declaration.

6. Timeshares Prohibited. No Unit may be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years.

7. Signs. Owners and occupants other than Declarant(s) shall not display signs on their Lots (or in Common Elements or any other portion of the Project) without the prior written consent of the Declarant during the Development Period and thereafter by the Association. To the extent that the foregoing restrictions are superseded or prohibited by the Act or other applicable law, the Board may adopt reasonable time, place, size and manner of display restrictions regulating political signs, signs and symbols which are visible from outside the Lots subject to the provisions of the Act or other applicable law. Notwithstanding the foregoing, the Declarant may display signs deemed appropriate by Declarant on any Lot.

8. Flags. Owners and Occupants shall not display flags or banners or construct or install flagpoles on their Lots without the written consent of the Board. Notwithstanding the foregoing, the Owner or occupant of each Lot may display the flag of the United States and one (1) flag of the State of North Carolina, each not to exceed four feet (4') in height or six feet (6') in width, in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.G. § § 5-10, as amended. The Board may adopt reasonable time, place, size, and manner of display restrictions regulating flags displayed on Lots subject to the right described herein and the provisions of applicable law.

9. Pets. No Owner or occupant shall keep or store a house pet off of the Owner's Lot. Owners or occupants shall accompany pets on all temporary trips outside of a Unit. No Owner shall be permitted to raise, breed or keep mammals, birds, fish, or reptiles of any kind for commercial or Business and Trade purposes. The Association may adopt reasonable rules regarding household pets designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and facilities of the Lot and fair share use of the Common Elements. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

10. Decoration and Holiday Displays. Owners and occupants shall not display holiday signs, symbols, decorations or the like on their Lots any more than four (4) weeks before or one (1) week after the applicable holiday. All decorations shall be consistent with the Community Wide Standard, and any inflatable holiday yard decorations are expressly prohibited. To the extent that the

foregoing restriction is superseded, limited or prohibited by applicable law, the Association may adopt reasonable rules prohibiting holiday yard decorations based on objective consistently applied criteria, including but not limited to the location, size, brightness, or noise associated with said decorations consistent with applicable law.

11. Yard Maintenance. Owners shall maintain landscaping on their Lot, to the extent not maintained by the Association, in accordance with the Community Wide Standard. For Improved Lots, lawn and grass areas to be maintained by the Owners should be regularly cut, trimmed, edged and kept free from weeds or bare areas of dirt; plants and trees should be pruned and trimmed routinely; dead plant material should be removed and replaced; lawn clippings, branches, leaves and fallen trees must be removed from the property; plant and shrub beds should be kept free of weeds or bare areas of dirt and periodically replenished with natural ground cover such as pine needles or mulch.

12. Trash Collection. In the event that the Association elects to adopt trash collection guidelines and/or identifies an exclusive trash collection provider for the Project, all Owners shall comply with said guidelines and/or shall not utilize any trash collection service other than the exclusive provider selected by the Association.

13. Fuel Storage. No Lot may be used for the on-site storage of gasoline, heating, or other fuels, except that a reasonable amount of propane gas and other fuel may be stored on each Unit for emergency purposes and operation of gas cooking grills, lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article 10.

(b) Restricted Activities. The following activities are prohibited within the Property unless expressly authorized by, and then subject to such conditions as may be imposed by the Board of Directors:

1. Any activity which tends to cause an unclean, unhealthy or unsafe condition to exist outside of enclosed structures on the Lot;

2. Any activity which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Unit or which creates noise, unreasonable risk of fire or explosion, or other conditions which are a nuisance provided, nothing herein shall preclude normal and customary operation of any restaurant;

3. Any activity which violates local, state or federal laws or regulations;

4. Outdoor storage of goods, materials, or equipment, except that (1) outdoor storage of building materials shall be permitted during construction

on the Lot on which such materials are being stored; and (2) personal outdoor dining furniture and grills shall be permitted;

5. Any activity which would constitute a public or private nuisance;

6. Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

7. Use and discharge of firecrackers and other fireworks;

8. Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any storm sewer, drainage ditch, or other component of the storm drainage system serving the Property, any stream, pond, or lake, or elsewhere within the Property, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant may dump and bury rocks and trees removed from a building site on such building site;

9. Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge and subject to Section 4.4(c) of this Declaration;

10. Capturing, trapping or killing of wildlife within the Property, except in circumstances posing an imminent threat to the safety of persons using the Property and subject to Section 4.4(c) of this Declaration;

11. Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Property or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

12. Operation of motorized vehicles on pathways or trails maintained by the Association;

13. No vehicle may be left upon any portion of the Property except in a garage, driveway, parking pad, or other area designated by the Board. Commercial vehicles, recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles, and unlicensed vehicles or inoperable vehicles shall not be parked within the Property other than in enclosed garages; provided however, that one recreational vehicle, one camper, or one boat or other watercraft may be temporarily kept or stored completely in a driveway or completely on a parking pad on a Lot for not more than twenty-four (24) hours within each seven (7) day period. The term "vehicles," as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.

(c) Prohibited Uses. In addition to uses which are inconsistent with applicable zoning or are prohibited or restricted by other recorded covenants, conditions, restrictions or easements, the following uses are prohibited within the Property:

1. trailer courts, mobile home parks, and recreation vehicle campgrounds;
2. oil, gas or mineral exploration; drilling, boring, excavation, development, refining, quarrying, or mining operations, and all construction and equipment incident thereto; and oil or gas wells or related equipment or facilities, except that nothing herein shall preclude the operation of water wells, to the extent permitted under the Architectural Guidelines and approved pursuant to Article 10;
3. junk yards, scrap metal yards, automobile used parts and/or dismantling operations and sanitary landfills, except that nothing herein shall preclude recycling centers established solely for the collection and sorting of household recyclable materials provided that the same are not unsightly;
4. commercial excavation of building or construction materials, except in the usual course of construction of improvements;
5. dumping, storage, disposal, incineration, treatment, processing or reduction of garbage, or refuse of any nature, except as is incidental to the use, operation and ownership of any property (or a portion thereof) in accordance with this Declaration and in a manner which is not unsightly and does not result in noxious odors emitting from the subject property;
6. lumberyards, sawmills, or outdoor storage of building or construction materials (except in the usual course of construction on the site where stored);
7. flea markets, and ongoing fire and bankruptcy sale operations;
8. truck terminals and truck stop-type facilities (specifically excluding loading docks and similar facilities incidental to the use, operation and ownership of any property or a portion thereof in accordance with this Declaration);
9. any industrial use; and
10. “adult entertainment uses,” which terms shall mean, for the purposes of this Declaration, any theater or other establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (i) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) which are rated “X” by the movie production industry (or any successor rating established by the movie production industry) or is otherwise of a pornographic or obscene nature; or (ii) sexually explicit games, toys, devices, or similar merchandise.

(d) Prohibited Conditions. The following shall be prohibited at the Property:

1. Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property;

2. Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair;

3. Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Property, except that Declarant and the Association shall have the right to draw water from such sources and the Reviewer pursuant to Article 11 may, in its discretion, approve a private water well on certain Units which the Reviewer determines to be of sufficient size to accommodate a well without adversely impacting neighboring property; and

4. Satellite dishes, antennae and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Property. Notwithstanding the foregoing, (i) antennae or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) antennae or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennae or satellite dishes designed to receive television broadcast signals which are less than one meter in diameter (“Permitted Devices”) shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Lot in which an acceptable quality signal can be received and is screened from the view of adjacent Units, streets and Common Elements in a manner consistent with the Community-Wide Standard and the Architectural Guidelines.

11.3 Authority to Promulgate Rules.

(a) Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may adopt rules not inconsistent with the Use Restrictions hereof, and other such rules and regulations permitted by, and not inconsistent with, the Act, including such rules and regulations relating to the use of, and parking and traffic, on public and private streets located within the Property. Said rules and regulations shall be applicable to all Owners except the Declarant(s).

(b) At least fifteen (15) days prior to the effective date of any action under subsections (a) or (b) of this Section, the Board shall send a copy of any new rule or regulation to each Owner specifying the effective date of such rule or regulation. The Association shall

provide, without cost, a copy of the rules and regulations then in effect to any requesting Member or Mortgagee.

(c) Nothing in this Article shall authorize the Board or the Owners to modify, repeal or expand the Declaration, the Bylaws, the Articles, or the Design Guidelines. Such documents may be amended as provided therein.

(d) No rule or action by the Association or Board shall impede Declarant's right to develop the Property in accordance with the Master Plan, including, but not limited to, the rights of Declarant as set forth in Article 14.

11.4 Guidelines Maintained by Association. The Property is subject to Design Guidelines as set forth in Article 11 and other restrictions governing land development, architectural and design control, individual conduct and uses of or actions upon the Property. The Board may also adopt, promulgate, and amend from time to time, Pervious Pavement Guidelines and Rain Collection System Guidelines applicable to the construction, use, and maintenance of pervious pavement and Private Stormwater Management Facilities on the Lots as is reasonably necessary or appropriate to comply with the terms of the Permit. Notwithstanding the foregoing, the Previous Pavement Guidelines and the Rain Collection System Guidelines may not be amended or revised to exclude the incorporation by reference of the applicable chapters of the North Carolina Division of Water Quality Best Management Practices Manual.

11.5 Trash Collection Rules and Regulations. The Association may adopt and establish trash collection rules and regulations, which may include without limitation: (i) specific days for trash collection or hours during which trash collection is permissible, (ii) requirements for the nature of curbside containers and the hours that it is permissible to leave curbside containers next to the street, and (iii) requirements regarding the storage and/or screening of curbside containers when not curbside. Furthermore, the Association is authorized to identify an exclusive trash collection provider or providers if it determines such designation is in the best interest of the Project and the Members. In the event that the Association elects to designate an exclusive trash collection provider, the Association shall notify the members of the same, and the Members and other occupants of the Lots shall use that trash collection provider only.

11.6 Acknowledgement by Owners. All Owners are subject to the Use Restrictions and are given notice that (a) their ability to use their privately owned property is limited described in this Declaration including Section 11.2, thereby, and (b) the Board and/or the Owners may adopt, delete, modify, create exceptions to, or amend the rules. Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time.

Article 12 Easements.

12.1 Easements of Encroachment. During the Development Period, Declarant reserves unto itself, easements of encroachment, and for Upkeep and use of any permitted encroachment, between each Lot and any adjacent Common Elements and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or

altered thereon (in accordance with this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary.

12.2 Easements for Utilities, Access, Subdivision, Drainage.

(a) Declarant reserves unto itself a perpetual, nonexclusive easement for ingress, egress, regress, across, the installation and maintenance of utilities, further subdivision, and the right to dedicate public use, over, under, and upon any and all streets, roads, and other rights of way on the Property as shown on the Recorded Plat, all drainage and utility easements shown on the Recorded Plat or lying on the Property, and water and sewer easements shown on the Recorded Plat or lying on the Property.

(b) Declarant reserves unto itself a perpetual, nonexclusive easements for the purpose of access and Upkeep upon, across, over, and under all of the Property to the extent reasonably necessary to install and provide Upkeep for: roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, electricity, television, and security and similar systems. Declarant may assign these easements and rights to any utility supplier, cable company, security company or other company providing a service or utility subject to the limitations herein. Without limiting the general authority described by the foregoing, Declarant reserves the right to subject any portion of the Property, including the Common Elements, to an easement for the benefit of an electric Utility Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and continuing obligation to the electric Utility Company by the Association or the Owners directly.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Unit on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

12.3 Easement and Right to Dedicate Public Rights of Way and Utility Easements. Declarant reserves for itself, and its successors and assigns, the perpetual right to dedicate to public use, any and all: (i) rights of way, streets, roads, and other access ways, and (ii) utilities, drainage and similar easements, located on the Property.

12.4 Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, a perpetual easement over the Lots and the Common Elements for the purposes of enjoyment, use, access, and development of any Additional Property whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Elements for construction of roads and for connecting and installing utilities on such property.

12.5 Development and Other Easements. Declarant specifically reserves all of the easements identified as being so reserved in this Declaration including, but not limited to, those set forth in Article 15.

12.6 Easements for Cross-Drainage. Every Lot and the Common Elements shall be burdened with perpetual easements for natural drainage of stormwater runoff from other portions of the Property; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of stormwater onto adjacent portions of the Property without the consent of the Owner(s) of the affected property and the Board.

12.7 Right of Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Lot, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board, officers or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Lot to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any Unit without permission of the Owner, except by emergency personnel acting in their official capacities.

12.8 Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Lot to (a) perform its Upkeep responsibilities under Article 5, and (b) make inspections to ensure compliance with the Association Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

The Association also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Declaration, any Supplemental Declaration, the Bylaws, the Design Guidelines, or the rules. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefited Assessment.

The Property is hereby burdened with perpetual, non-exclusive easements in favor of the Declarant and the Association for overspray of water from any irrigation system serving the Area of Common Responsibility. The Association and the Declarant may use treated water from a treatment plant for the irrigation of any Area of Common Responsibility. Under no circumstances shall the Association or the Declarant be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

12.9 Access Easement for Common Elements. Declarant reserves for itself and grants to Owners a nonexclusive perpetual easement of access over and across the easement areas

designated on the recorded subdivision plats for the Property for pedestrian access to the Common Elements.

12.10 Sign Easements. Declarant reserves for itself, its successors and assigns, a nonexclusive perpetual easement for the installation and upkeep of signage, including without limitation signs, landscaping, lighting and other similar features, over the portions of the Property designated as "Sign Easement" on the recorded plats of the Project, together with the right to assign, convey, or transfer said easement, in whole or in part to the Association and/or other parties in the future.

12.11 Property Benefited. The easements reserved by and for the Declarant in this Declaration are for the benefit of the Property, the Additional Property, any real property made subject to this Declaration in the future, any real property to which the Declarant conveys the benefit of such easements, and any other real property identified by the Declarant from time to time.

12.12 Declarant Easements Assignable. Notwithstanding anything to the contrary herein, each and every easement reserved by, retained by, or granted to, the Declarant in this Declaration may be separately assigned to one or multiple parties as deemed appropriate by Declarant. Said assignments may be in connection with or separate from any assignment of Declarant Rights.

Article 13 Mortgage Provisions.

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

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

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of ninety (90) days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or Occupant which is not cured within ninety (90) days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws which is not cured within ninety (90) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

13.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

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

Article 14 Declarant's Rights.

14.1 Declarant's Rights. Declarant's Rights are those rights reserved for the benefit of Declarant as provided for in the Act and the Association Documents which shall include, without limitation, the following rights:

- (a) To complete improvements on the Property;
- (b) To maintain models, management offices, construction offices, sales offices, customer service offices, and signs advertising the Property;
- (c) Those rights set forth in Article 8 of this Declaration;
- (d) To designate any portion of the Property as Common Elements or Limited Common Elements;
- (e) To exercise all rights of architectural review and establishment of design guidelines and all other rights as set forth in Article 10 of this Declaration;
- (f) To appoint, remove and replace the members of the Board;
- (g) To construct improvements and Private Amenities within portions of the Property and to operate the same as public or private facilities in the sole discretion of Declarant;
- (h) To disapprove actions of the Board or any committee during the Development Period;
- (i) To disapprove any amendment or change in any Association Documents during the Development Period;
- (j) To withdraw property restricted to residential use from the restrictions contained herein and convert the same to Commercial Property but only to the extent owned by the Declarant or consented to by the Owners of the property to be withdrawn;
- (k) To enforce any covenants, restrictions and other provisions of the Association Documents during the Development Period;
- (l) To amend this Declaration as set forth in Section 16.2(a): and

(m) To replat any previously platted Lots or Units but only to the extent that the Declarant is the owner of the Lots and Units to be replatted or to the extent the Owners thereof consent.

14.2 Transfer of Declarant's Rights. Any or all of Declarant's Rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, separately, with regard to specific real property, or in their entirety. Notwithstanding the foregoing, each of the Declarant Rights described in subsections (f), (h), (i), and (k) of Section 14.1 above, the right to withdraw real property described in Section 8.2, and the right to establish additional covenants and easements described in Section 8.3 shall be vested in only one (1) Declarant at any time such transfer shall be effective unless it is in a written instrument signed by Declarant and the transferee and duly recorded in the Register of Deeds.

14.3 Modification of Development Plan. Each Owner, by accepting title to a Lot and becoming an Owner, and each other Person, by acquiring any interest in the Property, acknowledges awareness that Lake Tyler is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Property, or (b) changes in any conceptual or master plan for the Property, including, but not limited to, the Master Plan; provided, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time).

14.4 Development Easements. Declarant, its employees, agents and designees, specifically reserve a non-exclusive perpetual easement over, upon, under and above the Common Elements and other portions of the Property (expressly excluding a Unit) for any all purposes deemed reasonably necessary or desirable by Declarant for the development of the Property, any Additional Property and any Private Amenities including, but not limited to, easements of access, the installation and maintenance of utilities and easements as may be required from time to time by any governmental agency or pursuant to the Permit. Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Elements for the purpose of making, constructing, installing, modifying, expanding, replacing, and removing such improvements to the Common Elements as it deems appropriate in its sole discretion.

14.5 Marketing and Sales. During the Development Period or so long as Declarant owns any Private Amenities, Declarant and its designees may maintain and carry on upon the Common Elements and any property owned by Declarant such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, sales offices, and storage of building materials. Declarant may assign such rights to Builders and such other Persons as Declarant deems appropriate, in its sole discretion. Declarant, its assignees and its designees shall have easements for access to and use of such facilities. Declarant's or any designee's unilateral right to use the Common Elements for purposes stated in this section shall not be exclusive and shall not unreasonably interfere with use of such Common Elements by Owners unless leased pursuant to a lease agreement with the Association providing for payment of reasonable rent.

14.6 Declarant Approval to Changes in Association Documents. During the Development Period or so long as Declarant owns any Private Amenities, the Association shall not, without the prior written approval of Declarant, adopt any policy, rule or procedure that:

- (a) Limits the access of Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Elements of the Association or to any property owned by any of them;
- (b) Limits or prevents Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Elements or any property owned by any of them in promotional materials;
- (c) Limits or prevents new Owners from becoming members of the Association or enjoying full use of its Common Elements and Amenities, subject to the membership provisions of the Association Documents;
- (d) Discriminates against or singles out any group of Members or prospective Members or Declarant. This provision shall expressly prohibit the establishment of a fee structure (i.e., assessments, special assessments and other mandatory fees or charges) that discriminates against or singles out any group of Members or Declarant, but shall not prohibit the establishment of Benefited Assessments;
- (e) Impacts the ability of Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for the Project, as such plans are expressed in the Master Plan, as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete Lake Tyler shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or
- (f) Impacts the ability of Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

14.7 Unimpeded Access. The Association shall not exercise its authority over the Common Elements (including, but not limited to, any gated entrances and other means of access to the Property or any Private Amenities) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Property, or any Private Amenities over the streets and other Common Elements within the Property.

14.8 Additional Declarations/Restrictions. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent during the Development Period. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

14.9 Governmental Interests. During the Development Period, Declarant may designate sites within the Property for fire, police and utility facilities, and parks, and other public facilities in accordance with the Master Plan and applicable laws. The sites may include Common Elements if otherwise permitted by the Master Plan.

Article 15 Compliance and Enforcement.

15.1 General Remedies. Every Owner and any occupant of any Lot shall comply with the Association Documents and the Act. Failure to comply shall be grounds for an action by the Association to recover sums due, for damages, injunctive relief or any other remedy available at law and equity or under the Act.

15.2 Enforcement/Sanctions. The Board, or such other Association agent with the Board's approval, may impose sanctions for violations of Association Documents after notice and a hearing in accordance with the procedures set forth in the Declaration. Such sanctions may include, without limitation:

- (a) Imposing reasonable monetary fines which shall constitute a lien upon the Lot of the violator;
- (b) Suspending an Owner's right to vote;
- (c) Suspending any Person's right to use any Amenities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from the Lot;
- (d) Suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association; and
- (e) Levying Benefited Assessments to cover costs incurred in bringing a Lot into compliance in accordance with Section 9.6(b).

15.3 Self-Help Remedies. The Board, or such other Association agent with the Board's approval, may elect to enforce any provision of the Association Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations in accordance with any applicable ordinance(s) of Buncombe County, North Carolina) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in Article 16 or in the Bylaws.

15.4 Cumulative Remedies. The Association shall have all powers and remedies under the Act and the Association Documents which shall be cumulative of any remedies available at law or in equity.

15.5 Association's Right Not to Take Action. The Association shall not be obligated to pursue enforcement action in any particular case, such decisions to be within the discretion of the Board, except that the Board shall not be arbitrary or capricious in taking enforcement action.

Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (a) the Association's position is not strong enough to justify taking any or further action; or (b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or justify expending Association funds; or, (d) it is not in the best interest of the Association, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such covenant, restriction, rule or provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, rule or provision, nor shall it preclude any Owner from taking action at law or in equity to enforce the Association Documents.

15.6 Enforcement by Owner. Nothing set forth in this Article 15 shall prevent any aggrieved Owner from instituting any available remedy in law or in equity for a violation of the Association Documents.

Article 16 General Provisions.

16.1 Term. This Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, until the planned community (Lake Tyler) is terminated pursuant to the Act.

16.2 Amendment.

(a) By Declarant. During the Development Period, Declarant may unilaterally amend this Declaration for any purpose, including without limitation to incorporate government requested or required changes. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make or purchase Mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration. However, any such amendment shall not adversely affect the title to any Lot unless the affected Owner shall consent thereto in writing.

(b) By Owners. Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing sixty-seven percent (67%) of the total votes in the Association, and the consent of Declarant, so long as Declarant owns any Private Amenities or during the Development Period.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Register of Deeds unless a later effective date is specified therein. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege as long as Declarant owns any Private Amenities or during the Development Period.

16.3 Litigation. (a) Except as provided in Section 16.3(b) below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of sixty-seven percent (67%) of the membership vote and the consent of Declarant during the Development Period. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Association Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 10; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

(b) No judicial, quasi-judicial, administrative or governmental proceeding shall be commenced or prosecuted by the Association against or involving Declarant unless approved by a vote of seventy-five percent (75%) of the membership vote.

16.4 Hearing Procedures. Except as may be otherwise specifically authorized by the Association Documents, and permitted by the Association Documents, the Board shall not (i) impose a fine or penalty, (ii) undertake permitted remedial action, or (iii) suspend voting or infringe upon other rights of a Member or other occupant of a Lot or Unit for violations of the Association Documents, or for assessments or other amounts due and owing to the Association remaining unpaid for a period of thirty (30) days, or longer, unless and until the procedure required by the Act is completed.

16.5 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

16.6 Use of the Word "Lake Tyler". No Person shall use the word "Lake Tyler" or any derivative, or any other term which Declarant may select as the name of this development or any component thereof, in any printed or promotional material without Declarant's prior written

consent. However, Owners may use the word “Lake Tyler” in printed or promotional matter solely to specify that a particular property is located within the Property and the Association shall be entitled to use the word “Lake Tyler” in its name.

16.7 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. The Association may require the payment of a reasonable administration or registration fee by the transferee.

16.8 Attorneys’ Fees. In the event of an action instituted to enforce any of the provisions contained in the Association Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, all costs, including without limitation, reasonable attorneys’ fees and costs, and administrative and lien fees. In the event the Association is a prevailing party in such action, the amount of such attorneys’ fees and costs shall be a Benefited Assessment with respect to the Lot(s) involved in the action.

16.9 Stormwater Management.

(a) The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW7070514, as issued by the Division of Water Quality under NCAC 2H, 1000.

(b) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.

(c) These covenants are to run with the land and be binding on all persons and parties claiming under them.

(d) The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

(e) Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

(f) The maximum allowable built-upon area per lot is 4,000 square feet. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.

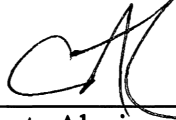
(g) All runoff from the built-upon areas on the lot must drain into the permitted system. This may be accomplished through a variety of means including roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter

swales to collect the lot runoff and directing them into a component of the stormwater collection system. Lots that will naturally drain into the system are not required to provide these additional measures.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 15th day of May, 2018.

STARS & STRIPES 4F, LLC

By: DSSIV Holding Co, LLC, its manager

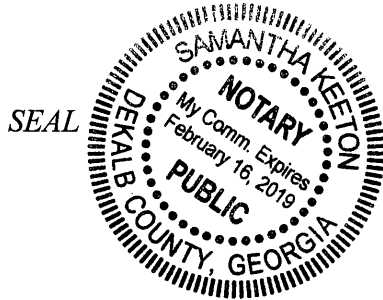
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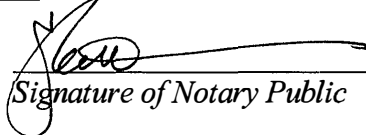
Costa Alexiou
Manager

State of Georgia
County of DeKalb

The undersigned Notary Public does hereby certify that Costa Alexiou personally appeared before such Notary Public this day in the State of Georgia and County or City of _____ and acknowledged that (i) **DSSIV Holding Co, LLC**, is the manager of **Stars & Stripes 4F, LLC**, a Delaware limited liability company, that (ii) he is the Manager of **DSSIV Holding Co, LLC** and he is authorized to execute this instrument on behalf of **DSSIV Holding Co, LLC** and (iii) that by authority duly given by **Stars & Stripes 4F, LLC** and **DSSIV Holding Co, LLC**, and as the act of said limited liability company, he signed the foregoing instrument in the name of such limited liability company on such limited liability company's behalf as its act and deed.

Witness my hand and official seal this 15th day of May, 2018.





Signature of Notary Public
My Commission Expires: 02/16/2019

EXHIBIT A

Property Description

Being all of Phases One, Six & Thirteen as shown on a map entitled "Final Plat of Lake Tyler, Phases One, Six & Thirteen, a Planned Unit Development" prepared by Brad L. Suitt & Assoc., P.A. and recorded in Plat Cabinet H, Slides 126 C-D-E-F-G-H and Plat Cabinet H, Slides 127 A-B-C-D in the Office of the Register of Deeds of Craven County, North Carolina as well as all revisions, modifications and amendments of the foregoing map as may be recorded in the said Register of Deeds. The foregoing shall include Lots and Common Areas as shown on said map.

Doc No: 10022502

Bk 3536 Pg 107

EXHIBIT B

All that real property described in deeds to Stars & Stripes 4F, LLC recorded in Book 3470, Page 210; Book 3470, Page 220; and Book 3530, Page 1899 in the Office of the Register of Deeds of Craven County, North Carolina.

Doc No: 10022502

Bk 3536 Pg 108