

FOR REGISTRATION REGISTER OF DEEDS

Judy D. Martin
Moore County, NC

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NORTH CAROLINA

MOORE COUNTY

**DECLARATION OF COVENANTS, EASEMENTS,
CONDITIONS AND RESTRICTIONS FOR
RECOMBINATION LOTS 60-A THROUGH
67-A, INCLUSIVE, SECTION 3, WHISPERING
PINES PER MAP RECORDED MAP BOOK 15,
PAGE 629, MOORE COUNTY REGISTRY**

THIS DECLARATION is made this 21st day of November, 2012, by Thagard Point, LLC, a North Carolina limited liability company having an office at 2017 Seawind Lane, Wilmington, NC 28405 (hereinafter referred to as "Developer") and Donald Victor Welly and wife, Donna T. Welly, residing at 1 Thagard Lane, Whispering Pines, NC 28327 (hereinafter collectively referred to as "Welly") (hereinafter Developer and Welly are collectively referred to as "Declarant").

WITNESSETH:

THAT WHEREAS, the Declarant is the owner of (a) Lots 60-A through 66-A, inclusive, as shown on the map entitled "RECOMBINATION SURVEY FOR WEDDIE W. HUFFMAN, JR. & RICHARD A. HORGAN, NEW LOTS 60-A THRU 66-A, WHISPERING PINES, SECTION 3, MCNEILL TWSP, MOORE COUNTY, NORTH CAROLINA", dated July 20, 2011, prepared by Matthew A. Callahan, Registered Surveyor, and recorded in Map Book 15 at page 629, Moore County Registry, to which map and its recordation reference is hereby made for a more particular description of said lots, and (b) the 0.94 acre Tract which is more particularly described on Exhibit 1 attached to the deed recorded at Book 4026, Pages 212-215, of the Moore County Registry (together with the easements appurtenant thereto as described in said Exhibit 1) (all such real property is collectively referred to herein, and defined in Section 1.15 below as the "Properties"); and

WHEREAS, the Declarant is desirous of subjecting the Properties to the protective covenants, easements, restrictions and conditions hereinafter set forth, each and all of which is and are for the benefit of such Properties and for each owner of any one or more of such Properties, and shall inure to the benefit of and pass and run with such Properties, and each and every lot or parcel thereof, and shall apply to bind the successors in interest and any owner thereof;

NOW THEREFORE, the Declarant hereby declares that such Properties are and shall be held, transferred, sold and conveyed subject to the North Carolina Planned Community Act [North Carolina General Statutes Chapter 47F] (hereinafter referred to as the "Act") and subject to the protective covenants, easements, restrictions and conditions set forth in this Declaration, which are imposed for the

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2017 Seawind Lane
Wilmington, NC 28405

purpose of protecting and enhancing the value, desirability, aesthetics, living conditions and enjoyment of such Properties. These covenants, easements, restrictions and conditions shall run with the title to such Properties, and each of them, and be binding upon all parties, their heirs, successors and assigns, having any right, title or interest, legal or equitable, in such Properties or any part thereof, and these covenants, easements, restrictions and conditions shall inure to the benefit of each owner of such Properties or any part thereof.

PART 1

Definitions

Section 1.1 "**Association**" shall mean the Thagard Point Property Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns, an owners association organized for the mutual benefit and protection of the owners of the Properties. All owners of any of the residential Lots included in the Properties shall, by acceptance of a deed therefore, become and be members of the Association, which membership shall be appurtenant to and may not be separated from the ownership of any such residential lot.

Section 1.2 "**Executive Board**" shall mean the body authorized by the By-Laws of the Association to act on behalf of the Association.

Section 1.3 "**Common Areas**" shall mean all areas within the Properties which are designated or set aside for the common use and enjoyment of all of the Owners, and which are not designated for individual residential lot ownership, which Common Areas shall include all streets, roads, ponds, ditches, buffer areas and other areas not located in individual lots; provided that any street or road dedicated to and accepted for public use or conveyed to a local governmental authority shall cease to be a part of the common areas at the time of such acceptance by the North Carolina Department of Transportation or other relevant governmental authority.

Section 1.4 "**Common Expense**" means the expenses or financial liabilities for the operation of the Association.

Section 1.5 "**Declarant**" means collectively the parties indicated as such in the introductory paragraph of this Declaration.

Section 1.6 "**Declaration**" means this instrument, as it may from time to time be amended or supplemented.

Section 1.7 "**Developer**" means Thagard Point, LLC, a North Carolina limited liability company.

Section 1.8 "**Developer's Control Period**" means the time period from the Effective Date of this Declaration until the earlier of (i) the date that a total of five (5) of the Lots in the Properties are owned by, or have been transferred or sold to, Owners other than the Developer; or (ii) such date that the Developer voluntarily relinquishes to the Association the rights, powers and privileges reserved to the Developer under PART 8 below in a writing duly executed by the Developer and delivered to the Association.

Section 1.9 "**Effective Date**" means the date of the recording of this Declaration in the public deed book records of the Register of Deeds of Moore County, North Carolina.

Section 1.10 "**Improvement**" means any construction work done or placed on a Lot, any alteration of the physical appearance of a Lot, and any other physical treatment done on or applied to a Lot or a portion thereof.

Section 1.11 "Lot" means any one of the numbered lots 60A through 66A as shown on the plat recorded at Map Book 15, Page 629, Moore County Registry.

Section 1.12 "Membership" means the rights, privileges, benefits and obligations inuring to the benefit and burden of each Member of the Association by virtue of being an Owner of a Lot.

Section 1.13 "Member" means every person who has a membership in the Association by reason of the fact that such person is an Owner or one of the Owners of a Lot in the Properties.

Section 1.14 "Owner" shall mean the fee simple record owner, whether one or more persons or entities, of any Lot which is part of the Properties, but not those having an interest held only as security for an obligation.

Section 1.15 "Properties" shall mean all of (a) Lots 60-A through 66-A, inclusive, as shown on the map entitled "RECOMBINATION SURVEY FOR WEDDIE W. HUFFMAN, JR. & RICHARD A. HORGAN, NEW LOTS 60-A THRU 66-A, WHISPERING PINES, SECTION 3, MCNEILL TWSP, MOORE COUNTY, NORTH CAROLINA", dated July 20, 2011, prepared by Matthew A. Callahan, Registered Surveyor, and recorded in Map Book 15 at page 629, Moore County Registry, to which map and its recordation reference is hereby made for a more particular description of said lots, and (b) the 0.94 acre Tract which is more particularly described on Exhibit 1 attached to the deed recorded at Book 4026, Pages 212-215, of the Moore County Registry (together with the easements appurtenant thereto as described in said Exhibit 1).

Section 1.16 "System" means the waste water collection, treatment and disposal system installed and/or being installed by the Developer for the benefit of the Lots within the Properties, including without limitation, the 0.94 acre tract referred to in Section 1.18 above (and its related easements), the waste water collection, treatment and disposal system and equipment located on said tract, the pumping station located within the 20' by 20' foot easement in favor of the Association located near the Northeastern corner of recombination Lot 66A, and the septic line(s) running from such tract to such pumping station and from such pumping station to the connection points of any individual Lot septic systems connected or to be connected to such septic line(s).

PART 2

Property Rights

Section 2.1 **Owners' Easements of Enjoyment.** Every owner shall have a right and easement of enjoyment in and to all Common Areas, which rights and easements shall be appurtenant to and shall pass with the title to every Lot, and which rights shall be subject to the following conditions:

- a. The Association shall have the right to suspend the voting rights in the Association of any Owner (i) during any period for which any portion of any assessment against such Owner's Lot remains unpaid, and (ii) for a period not to exceed 60 days for any violation of the published rules of the Association.
- b. The Association shall have the right to mortgage, convey, dedicate or transfer all or any part of the Common Areas to a public agency or authority for such purposes and on such conditions as may be approved by an affirmative vote of at least five (5) of the seven (7) Members owning a Lot included within the Properties, as evidenced by written instrument executed by the Association and recorded in the Register of Deeds Office of Moore County.
- c. The Association shall have the right to impose on the Common Areas regulations for the use and enjoyment of the Common Areas.

d. Each Member of the Association shall be bound by the Bylaws of the Association as they may be amended from time to time, and by any Rules and Regulations adopted by the Association from time to time.

PART 3 Easements

Section 3.1 Easements. Developer reserves to itself, its successors and assigns, a perpetual, non-exclusive, alienable and releasable easement and right, on, over and under the ground, with persons and equipment to erect, maintain, inspect, repair and use electric and telephone wires, cables and conduits, and sewers, water mains and other equipment used for the conveyance and use of electricity, telephone communications, gas service, sewer and water service, cable television, optic cable, and other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the recorded plat of the Properties.

These easements and rights expressly include the right to cut any trees, bushes or shrubbery, to make any grading of the soil, to facilitate suitable drainage, to install or maintain any utility facilities, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Such easements shall lie over, under and across the area lying within ten (10) feet of all front lot lines bordering on Thagard Lane or, in the case of Lot 60A, bordering on Lakeview Drive, and within five feet (5') of all side and rear or lake front lot lines on the Lots located within the Properties.

Section 3.2 Public Agency Easements. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon any portion of the Properties in the performance of their duties.

Section 3.3 Emergency Easement. In case of an emergency or in case of any violation of these restrictions originating on, existing on or threatening any part of the Properties, regardless of whether any Lot Owner is present at the time of such emergency or violation, the Executive Board of the Association or any other person authorized by the Board shall have the right to enter any Lot for the purpose of (i) determining compliance with and enforcing these restrictions, (ii) remedying or abating any nuisance or the cause of such emergency or violation, and (iii) making any necessary repairs not performed by the Lot Owner. Such right of entry shall be immediate and shall not be deemed a trespass, and shall be without liability to the Association or its authorized representatives, except in cases of gross negligence.

Section 3.4 Maintenance Easement. Declarant hereby reserves unto the Developer and to the Association, its successors and assigns, perpetual, non-exclusive and alienable easements over all streets, roads and Common Areas necessary to perform the operation, maintenance and repair required by Sections 8.6 and 8.7 of this Declaration, and to perform any other duties imposed by this Declaration.

Section 3.4 Binding Nature of Easements. All easements and rights described herein are easements appurtenant, and shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and on any Owner, purchaser, mortgagee or other person having an interest in the Properties, or any Lot therein, or any part of or interest therein, regardless of whether reference to said easements is made in any instruments of conveyance or evidence of obligation.

PART 4 Utilities

Section 4.1 Lot Owners' Sewage and Waste Water Systems. Prior to the commencement of any construction of residential improvements on any Lot located in the Properties (excepting only the existing structures presently located on Lot 61A of the Properties), the Owner of such Lot shall obtain a septic

system permit from Moore County, which permit shall permit the Owner's system to connect to the System installed by the Developer for the benefit of the Lots and transferred by the Developer to the Association. Prior to the occupancy of any residence on a Lot (excepting only the existing residence presently located on Lot 61A of the Properties), the Owner shall obtain such permit and install a septic system as permitted by such permit on such Lot, which Owner's system shall be connected to the Association's System in a manner consistent with such permit and such connection shall be inspected and approved by the appropriate Moore County authorities. The Owner's septic system shall be designed, located, constructed and maintained in accordance with the requirements, standards, recommendations and permits imposed, made or issued by the appropriate public health authorities. Once all such permits and inspections have been obtained and completed, the Owner may then utilize the Association's System. Each Owner of any such septic system located on the Owner's Lot shall be solely responsible for the operation, maintenance and repair of, and for compliance with all governmental regulations relating to, the Owner's septic system.

Section 4.2 The Association's Waste Water Collection, Treatment and Disposal System. The Association shall be responsible for the ownership, operation, maintenance and repair of the System (including the 0.94 acre Tract and its related easements as more particularly described in the Deed transferring such Tract to the Association recorded at Book 4026, Pages 212-215 of the Moore County Registry, the waste water collection, treatment and disposal system located on such Tract, the pumping station located on the Northeastern corner of recombination Lot 66A, and the related septic line(s) running from said Tract to said pumping station and from said pumping station to the various connection points for the various Lots located along the borderline of the road known as Thagard Lane) installed by the Developer and transferred from the Developer to the Association for the benefit of the Lots and the Owners of the Lots. The Association shall permit each Lot Owner to attach such Lot Owner's individual septic system to the septic line owned and maintained by the Association, once the Lot Owner has obtained all required governmental or regulatory permits and approvals for the Owner's septic system.

Section 4.3 Water, Electric and Cable TV Connections for the Lots. The Owner of each Lot shall be solely responsible for connecting water, electric and cable television service for such Lot with the appropriate water, electric and cable television service utilities offering such services to the Properties. All service lines or pipes relating thereto shall be placed underground, unless otherwise approved in advance by the Association. The Association shall have no responsibility for the ownership, operation, maintenance and repair of any such water and electric service to be provided by any such utility to any Owner of any Lot, with respect to the utility connections from the terminal on or next to Thagard Lane or, in the case of Lot 60A, on or next to Lakeview Drive to any dwelling or other structure located on the Lot in question.

PART 5

Property Owners Association

Section 5.1 Thagard Point Property Owners Association, Inc. is a North Carolina non-profit corporation formed by Developer pursuant to Article 3 of the Act to own, operate, maintain and repair the System and the Common Areas, and to monitor compliance with and enforce the provisions of this Declaration and serve any other function provided for in this Declaration or approved by the Members of the Association.

Section 5.2 Membership in the Association. Every Owner of a Lot in the Properties shall be a Member of the Association, which Membership shall be appurtenant to and not severable from ownership of the Lot, and each such Member shall be bound by the Bylaws of the Association as amended from time to time.

Section 5.3 Voting Rights in the Association. Each Member of the Association shall be entitled to one (1) vote in the business of the Association for each Lot owned, provided that in the event a Lot is owned by two or more persons or entities, all of such Owners shall be Members, but collectively such Members shall be entitled to only one (1) vote, which shall be cast as provided in the by-laws of the Association. For clarification, voting by Members of the Association in the business of the Association shall be done on a one (1) vote per one (1) Lot basis, independent of the number of Owners of any given Lot.

PART 6

Management and Control of the Association

Section 6.1 Statutory Powers. Unless otherwise stated herein, the Association shall have all of the powers set forth in Article 3, Section 102 of the Act.

Section 6.2 Executive Board. The business and responsibilities of the Association shall be managed by its Executive Board, which shall be selected and operate as provided in Article 3, Section 103 of the Act and as provided in the by-laws of the Association; **PROVIDED** that all of the powers and duties of the Executive Board (and derivatively the Association) may be exercised by the Developer or by an Executive Board appointed by the Developer until such time as five (5) of the Lots located in the Properties have been transferred or sold by the Developer and conveyed to persons other than the Developer or until Developer releases in writing the right to exercise such powers and duties, whichever occurs first.

PART 7

Covenants for Assessments

Section 7.1 Lien and Personal Obligation for Assessments. Declarant hereby imposes on each Lot within the Properties the obligation of each Owner to pay to the Association the following:

- a. Annual Assessments or charges.
- b. Special Assessments for capital improvements, to be established and collected as hereinafter provided.
- c. Insurance Assessments.
- d. A pro rata share of any property taxes imposed on the Common Areas by any governmental taxing authority.
- e. Working Capital Assessments.

Such obligation shall apply to each Lot within the Properties, and shall be deemed accepted by the purchaser or transferee of any Lot upon receipt and recording of the deed for such Lot. The amount of any unpaid annual assessment for the then current calendar year shall be paid at the closing of the purchase of any Lot and prorated between the seller and the new Owner/purchaser of the Lot as of the date of such closing.

The annual, special and insurance Assessments, together with any interest, collection costs and attorney's fees, shall be a continuing lien upon the Lot against which Assessment is made, and the obligation to pay the same shall be the personal obligation of the person(s) or entity(ies) which was the Owner(s) of the Lot at the time such Assessment became due. In the event two (2) or more individuals or entities are collectively the Owner of a Lot, the obligation of such Owners to pay any such Assessment shall be joint and several. The personal obligation for the payment of delinquent Assessments shall not pass to subsequent Owners of the Lot against which such Assessments are a lien, unless expressly assumed by such subsequent owner; but nothing herein shall prohibit the Association from seeking a judgment against the delinquent Owner, which shall be a lien upon any property in the name of the

delinquent Owner, and any such judgment lien shall remain a lien against the property in question notwithstanding the sale of the property to a subsequent owner.

Section 7.2 Purpose of Assessments. The Assessments imposed herein shall be used exclusively to promote the health, safety, welfare and enjoyment of the Owners of the Lots in the Properties and for the ownership, improvement, maintenance and repair of the System, all easements owned by the Association, and the Common Areas located in or about the Properties. Specifically, Assessment funds may be used for any of the following purposes:

- a. Ownership, operation, maintenance and repair of the System, including ad valorem property taxes on the 0.94 acre tract referred to in Section 1.18 above and the cost of any maintenance contract for the System entered into by the Association with an independent maintenance contractor for the System;
- b. Maintenance of and improvements to the Common Areas.
- c. Enforcement of these restrictions.
- e. Operating expenses of the Association;
- f. Indemnification of individuals as permitted by this Declaration; and
- g. Any other action deemed by the Association to promote the health, welfare and safety of the Owners or to increase the enjoyment of the Properties by the Owners.

Section 7.3 Annual Assessments

- a. Except as provided herein for the initial period of operation of the Association, Annual Assessments shall be in an amount to be fixed annually by the Developer during the Developer Control Period and annually thereafter by the Executive Board, each of which may set different amounts of Assessments from year to year as it deems necessary to accomplish the purposes set forth in Section 7.2 above.
- b. The initial period of operation of the Association shall be the partial calendar year commencing with the date of incorporation of the Association, April 18, 2012 until December 31, 2012. The amount of the Assessment for such initial period, if any, shall be set by the Developer and communicated to each transferee or purchaser of a Lot from the Developer at or before the time of any closing on such transfer or purchase of the Lot which occurs on or before December 31, 2012.
- c. The amount of the Assessment for each subsequent calendar year shall be determined by the Association in advance of the beginning of the annual assessment period, which shall begin on January 1 of each year, and notice of the same shall be sent to each Owner of a Lot, together with the date on which payment of such assessment is due. The Executive Board shall have the authority to provide for and require the payment of assessments on an annual or quarterly basis.
- d. Adjustments in the amount of Annual Assessments shall be subject to the following limitations:
 - (1) Notwithstanding any other provision herein, the Executive Board may set an Annual Assessment amount of up to \$100.00 per year.
 - (2) For the year beginning on January 1 of the year following the first year in which a Lot is sold by the Developer to a purchaser, and for each year thereafter, the increase in the amount of the annual assessment may not be more than five percent (5%) of the previous year's assessment, unless the real property taxes assessed on the 0.94 acre tract referred to in Section 1.18 are increased by a greater percentage, in which case any such increase may not be more than such greater percentage increase.

(3) Either of the above two limits may be exceeded if approved by the affirmative vote of the Owners of five (5) of the seven (7) recombination Lots in the Properties voting in person or by proxy at a meeting of the Members called for such purpose or at an annual meeting for which such item has been placed on the agenda.

Section 7.4 Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a special assessment for that year, for the purpose of defraying all or a part of the costs of any construction, reconstruction, repair or replacement of a capital improvement in the System or on any Common Area, including any fixtures, equipment or personal property related thereto; provided that any such assessment shall require the affirmative vote of the Owners of five (5) of the seven (7) recombination Lots in the Properties voting in person or by proxy at a meeting of the Members called for such purpose or at an annual meeting for which such item has been placed on the agenda.

Section 7.5 Insurance. The Association, as a part of the common expense, shall if its Executive Board, in its sole discretion, determines that it is necessary or desirable, maintain insurance in amounts deemed by the Executive Board to be reasonable and sufficient to cover the following:

- (a) Risk of loss or damage to the System.
- (b) Risk of loss or damage to the Common Areas.
- (c) Owners hazard and liability insurance for the System and the Common Areas.

The Association may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a member of the Executive Board, or as an officer, employee or agent of the Association, against any expenses, liability or loss for the Association's actions or such person's actions or conduct taken on behalf of or at the request of the Executive Board or the Association, whether or not the Association would have the power to indemnify such person against such expense, liability or loss under Section 12.6. Any such insurance shall be for the benefit of the Association, and the proceeds shall be payable to the Association. The Association, acting through its Executive Board, shall have the sole right to settle any claims arising under such insurance.

Section 7.6 Insurance Assessments. The cost of insurance obtained pursuant to Section 7.5 shall be a common expense, and an amount sufficient to pay the premiums for the same each year shall, if necessary and if not otherwise included within the determination of the Annual Assessments, be paid by the levy of an additional annual "Insurance Assessment" which shall be in addition to the Annual Assessments provided for in Section 7.3 above, and which shall be levied, collected and enforced in the same manner as the Annual Assessment.

Section 7.7 Notice and Quorum Requirements for Actions Taken Under Sections 7.3, 7.4 and 7.6. Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.3, 7.4 and/or 7.6, or any meeting at which such action is on the agenda, shall be sent to all Members not less than thirty (30) days in advance of said meeting. At such meeting, the appearance in person or by proxy of Members owning five (5) of the seven (7) Lots in the Properties entitled to vote on such issues shall constitute a quorum. If no quorum is attained at the first such meeting or any subsequent meeting scheduled for such purposes, the meeting shall be adjourned for a period of not less than twenty (20) nor more than sixty (60) days, and the number required for a quorum at such subsequent meeting called for such purpose shall be the appearance in person or by proxy of Members owning four (4) of the seven (7) Lots in the Properties entitled to vote on such issues.

Section 7.8 Uniform Rate of Assessments. Annual, special and insurance assessments shall be fixed at a uniform rate for all Lots, so that the amount of any such assessment shall be the same for each

and every Lot in the Properties, independent of the size or value of any individual Lot. The Executive Board may make provision for the payment of any such assessments on an annual or quarterly basis.

Section 7.9 Effective Date of Assessments. The responsibility of an Owner other than the Developer for the payment of any assessments levied against a Lot shall go into effect on the date of acceptance of a deed for such Lot by such owner/transferee or owner/purchaser from the Developer (or in the case of Donald Victor Welly and Donna T. Welly on the date these Restrictive Covenants are recorded); **PROVIDED** that the Developer shall not be required to pay annual assessments on unsold Lots owned by the Developer; but, in lieu of assessments, Developer shall pay a pro rata share of the total of any such assessments levied against all Lots in the Properties based on the number of Lots owned by the Developer on the first day of the assessment period.

Section 7.10 Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within thirty (30) days of the date on which the same is due shall bear interest at the rate which interest accrues by applicable North Carolina law on an unpaid judgment. The lien shall arise as of the first day of the assessment period for which the lien is imposed, and shall, as of that date, constitute a lien for the improvement of the real property constituting the Lot in question. Except as otherwise provided in Article 3, Section 116 of the Act, such lien shall be enforceable through the provisions of Article 2A of Chapter 45 of the North Carolina General Statutes. The Association shall have the authority to file with the Register of Deeds Office of Moore County, North Carolina a notice of assessment lien against the Owner of any Lot for which any assessment against an individual Lot authorized by this Declaration and/or the By-Laws of the Association remains unpaid more than thirty (30) days after its due date, and such lien shall continue until the unpaid assessment is paid in full, together with any interest thereon authorized by the By-Laws of the Association. The Association may also bring a legal action against the Owner(s) personally obligated to pay the same and obtain a judgment for the amount of such assessment, and enforce said lien in any manner provided by law, including a judicial sale under Article 29B of Chapter 1 of the General Statutes. An Owner may not avoid liability for any assessment by non-use of his Lot or his non-use of any part of the Properties. To assist in the Association's enforcement of any lien for any unpaid assessment, unless waived in writing by the Association prior to the closing, any future purchaser of a Lot from any Owner(s) of such Lot who obtained title for such Lot (or any portion thereof) from the Developer shall not be entitled to vote as a Member of the Association unless such purchaser made arrangements at the closing of such purchaser's purchase of such Lot for the payment to the Association of any such unpaid assessments, including any accrued unpaid interest, owed by such selling Owner(s) out of the purchaser's funds otherwise payable to the seller of the Lot at the closing of the sale of the Lot.

Section 7.11 Remedies and Requirements of the Association. In addition to any other remedies provided herein, the Association shall have all of the remedies provided in Article 3, Section 116 of the Act for the collection of unpaid assessments, and the Association shall comply with the requirements of such provisions.

Section 7.12 Subordination of Assessment Lien. The lien for assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot by way of a first mortgage foreclosure shall extinguish the lien on the Lot to the extent of any payments for assessments which came due prior to the recording of such mortgage, but the lien for such payments shall attach to the proceeds of sale in priority immediately after the mortgage being foreclosed.

PART 8

Rights, Duties and Responsibilities of the Developer and the Association

Section 8.1 Reservation of Rights to the Developer. The rights, powers and privileges reserved to the Developer under this Part shall be in full force and continue from and after the date of recording of this Declaration until the end of the Developer Control Period.

Section 8.2 Rights Reserved. During the Developer Control Period, the Developer retains and shall have the following rights, powers and privileges which shall be in addition to any other rights reserved to the Developer herein:

- (a) The Association. All of the powers and duties of the Executive Board of the Association may be exercised by the Developer and Developer shall be entitled to appoint all members of the Executive Board.
- (b) Amendments by Developer. The following amendments to this Declaration may be effected by the Developer, during the Developer Control Period, or by the Executive Board of the Association thereafter, without the consent of the Members:
 - 1. Prior to the sale of the first Lot, the Declaration may be amended by the Developer.
 - 2. Developer may amend this Declaration to effect the addition of lands as provided in Section 11.2.
 - 3. Amendments to correct any obvious error or inconsistency in drafting, typing or reproduction.
 - 4. Amendments to conform to the requirements of any applicable law or governmental regulation or the rulings of any governmental agencies having jurisdiction; or, to qualify the Property or any Lots and improvements therein for mortgage or improvement loans made, insured or guaranteed by a government agency; or, to comply with the requirements of law or regulations of any quasi- governmental corporation or agency, upon a letter from any such corporation or agency requesting or suggesting that an amendment is necessary to comply with the requirements of such corporation or agency.
 - 5. Amendments deemed necessary by Developer to qualify any portion of the Properties for tax-exempt status.
 - 6. Amendments necessary to address any platting change of the Properties as permitted herein.
- (c) Right to Reject Amendments. Developer shall have the right to veto, reject or refuse to comply with any amendment to the Declaration approved by the Members during the Developer Control Period.
- (d) Notwithstanding any provision of this Declaration to the contrary and independent of the number of Lots then owned by the Developer, the Developer reserves the right to change the stated or planned use, configuration or designation of any of the lands or Lots in the Properties to which Developer then owns title, including the right to replat lots to create more or fewer lots and to take such steps as are necessary as to cause such replatted lots to be suitable building lots or to comply with governmental regulations or restrictions, provided, that no such change shall be made if it would an adverse effect on the value of the Lots previously sold or transferred by the Developer to persons or entities other than the Developer.

Architectural Controls

Section 8.3 Action by the Association. All duties and responsibilities conferred upon the Association by this Declaration or the By-Laws of the Association shall be exercised and performed by

the Executive Board of the Association. During the Developer Control Period, all such duties and responsibilities of the Association and all rights and actions authorized to be performed by the Association shall be binding upon and exercised by the Developer.

Section 8.4 Building and Site Improvements. Except with respect to the existing structures on Lot 61A of the Properties, all plans and specifications for any structure or improvement whatsoever to be erected on any Lot, and the proposed location and orientation in relation to the boundaries of said Lot, and the construction materials, the roofs, and exterior color schemes of any such structure or improvement, shall be submitted in writing to the Association and shall require the prior written approval of the Association prior to the commencement of any work for such structure or improvement. No structure or improvements shall be erected, commenced, altered, placed or maintained on any Lot located in the Properties, nor shall any change or alteration be made thereto, including painting or repainting of exterior surfaces, unless and until the final written plans, including elevation plans for structures, and written specifications for the same shall have been submitted to and approved in writing by the Association. In order to obtain advance Association approval, a complete set of the final plans and specifications for any and all proposed improvements, the erection or alteration of which is desired by a Lot Owner, shall be submitted in writing to the Association. Such plans shall include plot plans showing the location on the Lot of the buildings, wall, fence, or other structure proposed to be constructed or altered. Proposed construction materials and colors must also be included. The Association shall approve or disapprove plans, specifications and details of any proposed improvements within thirty (30) days from the receipt thereof. The copy of such plans, specifications and details submitted to the Association shall remain with the Association. In the event the Association fails to approve or disapprove plans or locations of a proposed dwelling or structure on a Lot within thirty (30) days after said plans and specifications have been submitted to it in writing, or in any event, if no suit to enjoin the construction of such dwelling or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required, and the provisions of this Section 8.4 will be deemed to have been fully complied with.

Section 8.5. Approval of Plans; Construction.

a. No plans for a residential dwelling or structure will be approved by the Association if in the opinion of the Association such plans are inconsistent with or violate the provisions of this Declaration or if the proposed dwelling structure is not, in the opinion of the Association, aesthetically in harmony with the other dwellings on the Properties or with the natural environment of the Properties.

b. The exterior of all residential dwellings and structures must be completed within 12 months of the commencement of construction thereof, and construction must start within 6 months of approval of the related plans by the Association.

c. The Developer reserves the right to approve or disapprove all plans and locations of homes on the Lots until the Executive Board of the Association is selected and commences to function. The Developer also reserves the right not to appoint the initial members of the Executive Board of the Association until five of the Lots in the Properties are owned by persons other than the Developer. The Executive Board of the Association will be composed of three (3) persons designated and appointed by the Association (or by the Developer during the Developer Control Period), in which appointment, each Lot, regardless of the number of owners, will be entitled to one (1) vote and a majority vote of the Lots will be controlling. After the Developers Control Period, thirty (30) days advance written notice to the Owners of the Lots in the Properties will be given prior to the members of the Association voting on the election of the members of the Executive Board.

In the event the Association fails to approve or disapprove plans or locations of a proposed residence or other structure on a Lot within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection of such building or the making of such

alterations has been commenced prior to the completion thereof, such approval will not be required, and this covenant will be deemed to have been fully complied with. Members of the Executive Board shall not be entitled to any compensation for services performed pursuant to this Section.

Maintenance of Roads and Common Areas

Section 8.6 Responsibility for Road Maintenance. Developer shall maintain Thagard Lane until such time the first to occur of (i) the the Village of Whispering Pines accepts ownership of and Thagard Lane and assumes responsibility for its maintenance; or (ii) five of the seven Lots in the Properties are owned by persons or entities other than the Developer; at which time any responsibility for the ownership and maintenance of Thagard Lane not assumed prior thereto by the Village of Whispering Pines shall be borne by the Association. Notwithstanding anything to the contrary herein, at such time as Thagard Lane is accepted as part of the system of roads owned and maintained by the Village of Whispering Pines, the responsibilities of the Developer and the Association for its ownership and maintenance shall terminate.

Section 8.7. Maintenance of Common Areas. The Association shall be responsible for maintaining, repairing and replacing any structures on or improvements to the Common Areas, including the utility and drainage easement areas, and for any shrubbery, trees and other plants on the Common Areas. The Association shall further have the right to effect any repairs or alterations to the stormwater drainage system on the Properties, including all pipes, ditches and ponds, and to enter upon any Lot to the extent reasonably necessary to carry out such repairs. By accepting title to a Lot, all Lot owners grant a right of entry to the Association for such purposes. In the event that the need for any maintenance, repair or replacement to any portion of the Common Areas is caused through the willful or negligent act of an Owner, his family, guests or invitees, the cost of such maintenance, repair or replacement shall be added to and become a part of the assessment to which any Lots owned by such Owner are subject. The Association shall maintain all common areas and shall pay all premiums associated with general liability insurance insuring against liability arising from the ownership and operation of such common areas.

PART 9 Use Restrictions

Section 9.1 Land Use and Building Type. No Lot shall be used for any purposes other than residential uses and uses incident thereto, which shall not include any commercial uses or other uses designed to generate income. No building shall be erected, altered, placed, or be permitted to remain on any Lot other than one single family dwelling, which may include attached guest quarters, and a garage, attached to or detached from the dwelling, for the use of the occupants of the dwelling. Any garage shall be placed on the Lot so that any garage door for vehicle use shall not face or front on the street side of the Lot, provided that this requirement shall not apply to the existing structure on Lot 61A of the Properties.

Section 9.2 Minimum Residence Size. No single story residential structure which has an area of less than 1,800 heated square feet (exclusive of porches, breeze-ways, steps and garages) shall be erected or placed or permitted to remain on any Lot. No two-story or one and one-half story residence which has an area of less than 1,200 heated square feet on the ground floor (exclusive of porches, breeze-ways, steps and garages) shall be erected or placed or permitted to remain on any Lot. Regardless of the number of stories, all dwellings must have a minimum of 1,800 heated square feet (exclusive of porches, breeze-ways, steps and garages). In addition, maximum size of all structures "under roof" on a given Lot shall not exceed 24% of the square footage of the Lot, as required by the applicable Whispering Pines ordinance.

Section 9.3 Minimum set-back requirements. No building or permanent structure on any Lot (other than an approved pier, dock or bulkhead complying with the requirements of Section 9.8 below) shall be located within fifty feet (50') of the Lot boundary on the lakefront side adjacent to Thagard Lake,

or within forty feet (40') from the boundary of the Lot fronting on Thagard Lane or, in the case of Lot 60A, from the boundary of the Lot fronting on Lakeview Drive, or within twenty feet (20') from side lines adjacent to a bordering Lot or, in the case of Lot 66A, adjacent to Lakeview Drive. These set-back requirements shall not apply to the existing structures on Lot 61A of the Properties. The Developer reserves unto itself, its successors and assigns, during the Developer Control Period, the right to control absolutely and to solely decide the precise site and location of any house or dwelling or other structure upon any Lot, and after the Developer Control Period, the Association reserves unto itself, its successors and assigns, the right to control absolutely and to solely decide the precise site and location of any house or dwelling or other structure upon any Lot. In order to implement and effectuate such right of control, the exact location of the dwelling, garage and any outbuildings on any Lot shall be shown on the site plan for each Lot to be submitted to and approved by the Developer during the Developer Control Period, and thereafter the Association prior to the commencement of any construction thereof.

Section 9.4 No Commercial Use. No business, trade, commerce or other activity which may be considered a nuisance to the neighborhood shall be carried on upon any Lot. No trade materials or inventories may be stored upon any Lot and no tractor-trailer type trucks, house trailer (other than camping trailers) or mobile home may be stored or regularly parked on any Lot.

Section 9.5 Nuisances. No noxious or offensive activities shall be carried on upon any Lot, nor shall any activity be engaged in which would become an annoyance or nuisance to the residents of the Lots in the Property. "Noxious" or "offensive" shall mean any activity, visual impression, odor or noise which appreciably interferes with the quiet and undisturbed use of his or her property by any Lot owner or lawful occupant of any Lot. The Executive Board shall, in the event that a question arises, become the arbiter of what constitutes a nuisance. If the determination of the Executive Board is disputed by a Owner, then all legal and factual questions shall be determined by a majority vote determined by secret ballot of the members of the Association at a regular annual meeting, and the Association, by such vote, shall determine whether the use in question violates this section. Following such vote, there shall be no further remedy for either the Owner or the Association (or its Executive Board).

Section 9.6 Maintenance of Lots. In the event that any Owner fails or refuses to keep any Lot free from weeds, underbrush, refuse piles, or other unsightly growth or objects, then, after 30 days written notice from the Association, the Association or its designee shall be entitled to enter upon such lands and remove the same at the expense of the Owner, and such entry shall not be a trespass. The costs incurred by the Association for such removal shall be a lien on such Lot, and such amount shall be due and payable 30 days after receipt by the Owner of a bill therefor. In the event of the failure of the Owner to pay such amount within 30 days of receipt of such bill, the lien for such amount, together with any related collection costs, shall be enforceable by legal proceedings in the same manner as provided in Section 7.10.

Section 9.7 No Temporary Structures. No structure of a temporary nature and no trailer, mobile home, recreational vehicle, tent, shack, garage barn or other outbuilding shall be used on any Lot at any time as a dwelling or residence, either permanently or temporarily. No metal building may be used as a residence on any Lot.

Section 9.8 Piers, Docks and Bulkheads. Piers, docks and bulkheads may be constructed on the lakefront/waterfront side(s) of a Lot or adjacent thereto provided that prior to construction, written approval has been obtained from the appropriate Federal, State, County and local authorities having jurisdiction over the matter in question.

Section 9.9 Fences, Walls, Hedges, Plantings. No fence, wall, hedge, or mass plantings shall be allowed along or adjacent to the boundary lines of any Lot, unless approved in writing by the Association prior to installation. In addition, all service utilities, fuel tanks, clothes lines and wood piles shall be

enclosed in a wall or vegetative screen approved by the Association such that the same are not visible from Thagard Lane, Lakeview Drive or from any other Lot in the Properties.

Section 9.10 Parking of Vehicles and Recreational Vehicles. No boat, motor boat, trailer, motor home or mobile home or similar type vehicle may be kept, stored or placed on any Lot unless the same is enclosed in a wall or vegetative screen approved by the Association such that the same are not visible from the Thagard Lane, Lakeview Drive or from any other Lot in the Properties.

Section 9.11 Electrical, Telephone and Utility Connections. All electrical, telephone, water and cable television services running from the front street terminal location(s) to any residence or other structure on a Lot shall be placed underground, with the cost for such underground service being shared by the Owner and the applicable utility company in conformity with such utility company's then existing policy. No overhead wiring insofar as electrical, telephone and other wire using utility services are concerned shall be permitted on any Lot.

Section 9.12 Animals. No animals kept for resale or breeding shall be kept or maintained on any Lot or in any residence or garage located on any Lot. No animals posing a danger, in the opinion of the Association, to any other Lot owners or to the public shall be kept or maintained on any Lot or in any residence or garage located on the Properties. Household pets may be kept provided that their boarding does not create levels of noise or odor which interfere with the rights of other Owners to the undisturbed use and possession of their Lots. All animals must be properly penned or not allowed to roam or run free on areas of the Properties other than the Lot owned by the animal's owner.

Section 9.13 Signs. No sign or billboard of any kind shall be erected or allowed to remain on any lot other than a "For Sale" or "For Rent" sign which is in compliance with any applicable law or regulation and properly maintained. The Association shall have the right to (i) adopt rules and regulations governing the size, content and maintenance of any such signs and (ii) remove any signs which are not in compliance therewith.

Section 9.14 Alterations to Common Areas. Only the Association may make or authorize alterations to any Common Areas.

Section 9.15 Restrictions On Further Subdividing. No Lot shall be subdivided except to enlarge an adjoining Lot with the consent of the Owner of such adjoining Lot, but any lot so enlarged cannot be improved with more than one single family dwelling. During the Developer Control Period, the Developer may reconfigure unsold Lots but may not thereby increase the number of Lots. For purposes of this provision "subdivide" or "subdividing" shall include any process whereby the size or configuration of a Lot is altered or the number of Lots is changed.

Section 9.16 Tree Cutting. At the time of this Declaration, the Properties described herein are composed principally of wooded lots. It is the intention and desire of the Developer that the lots remain wooded insofar as is practicable while at the same time allowing the construction and enjoyment of residences on the Lots. Therefore, only under the terms and conditions hereinafter set forth can certain trees located on a Lot can be cut and removed. Prior to any tree cutting, the following requirements must be complied with:

- A. All trees within the area of actual construction of a dwelling or buildings approved by the Association can be cut and removed.
- B. All trees less than four (4 ") inches in diameter can be cut and removed.
- C. No trees four (4") inches and above in diameter at ground level can be cut or removed without the advance written approval of the Association.

- D. Any tree or trees endangering a dwelling or other buildings located on a Lot can be cut and removed.
- E. Other trees can be cut and removed only when approved in writing in advance by the Association.

The Association may impose upon and collect fines from any Owner in an amount to be set by the Association for any Owner's violation of this Section 9.16, and such fines may be substantial to deter such Owner or any other Owner from any future violation of this Section.

Section 9.17 Parking. Each Owner must provide on the Lot off-street parking for not less than two passenger vehicles prior to occupation of the dwelling on the Lot. Parking areas and driveways shall be constructed of concrete, brick, asphalt, turfstone, pea gravel or other material approved in advance by the Association.

Section 9.18 Driveway Connections. All driveway connections to and from any Lot in the Properties to Thagard Lane or, in the case of Lot 60A, to Lakeview Drive, to shall be at least sixteen feet (16') in width. In the event an Owner's driveway connection causes any damage to Thagard Lane, or any drainage ditch adjacent to Thagard Lane, or to the flow of drainage water along Thagard Lane, the Association shall have the right to have such damage repaired at the expense of the Owner.

PART 10 Rights of Lenders

Section 10.1 "Institutional Lender" Defined. Institutional Lenders shall mean banks and other lending institutions making loans secured by deeds of trust on any of the Lots in the Property.

Section 10.2 Rights of Institutional Lenders. Institutional lenders shall be entitled to receive written confirmation of the status of this Declaration with respect to any rights and obligations arising hereunder as they apply to any Lot within the Property, and stating whether any Lot or Lot Owner is in compliance with such obligations.

Section 10.3 Providing of Information to Institutional Lenders. The information referred to in Section 10.2 shall be provided to an Institutional Lender upon request. The Association shall be entitled to charge a fee for this service, if such is deemed appropriate, to be in an amount similar to that charged by the Institutional Lenders for written information provided by them.

PART 11 Addition of Properties

11.1 Vote Required. Except as provided below, the addition of property to this Declaration shall require the assent of the Developer during the Developer Control Period and thereafter by the affirmative vote of five Owners/members of the Association at a meeting called for this purpose, or an annual meeting for which such matter has been placed on the agenda, notice of such in either case to be given at least 30 but not more than 60 days prior to the meeting.

11.2 Developer may add properties. If the Developer or its successors or assigns shall develop any Additional Property contiguous to any Lot in the Properties, such Additional Property or any portion thereof may be added to the Properties included in this Declaration without assent of the Association or its members, provided that such Additional Properties shall be deemed to constitute one or more additional Lots within the meaning of this Declaration, and any such additional Lots shall be subject to all of the terms, restrictions and conditions of this Declaration. Any addition of any Additional Property(ies) pursuant to this Section shall become effective upon the filing by Declarant of a supplemental or amended Declaration in the Pender County Register of Deeds Office.

11.3 Use Restrictions on Additional Properties. Nothing herein shall prevent Declarant from imposing different use restrictions or architectural controls on any Additional Properties; provided, that no dwellings of less than 1800 square feet shall be allowed on any additional properties, and no other restrictions or architectural controls shall be imposed on any such additional properties which would adversely affect the values of the other Properties subject to these restrictions.

PART 12 General Provisions

12.1 Enforceability. The Association or any Owner who is a member in good standing of the Association shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, charges and other obligations now or hereafter imposed by the provisions of this Declaration. Failure of the Association or its Owner-Members to enforce an provision contained herein shall not be deemed a waiver or such provision or the right to enforce the same thereafter.

12.2 Stormwater Runoff Enforcement. The State of North Carolina is hereby made a beneficiary of this Declaration to the extent necessary to enforce its stormwater runoff regulations as the same may apply and be amended from time to time.

12.3 Severability. Invalidation of any one or more of these covenants or restrictions by judgment or court order or otherwise shall not affect any other provisions, which shall remain in effect as written.

12.4 Lots Subject to Declaration. Except as provided in Section 12.5 below, all present and future Owners, tenants and occupants of Lots, and their guests or invitees, shall be subject to and shall comply with the provisions of this Declaration, as it may be amended from time to time as provided herein. Acceptance of a deed or lease, or entering into possession of a Lot shall constitute acceptance of a ratification of the validity of all of the provisions set for the herein. The provisions of this Declaration be binding and shall inure to the benefit of and be enforceable by the Association or any Owner, or their heirs, successors or assigns for a period of 20 years from the date of recording of this Declaration. After the end of the 20 year period, this Declaration shall automatically renew for successive periods of 10 years each unless modified or terminated by the affirmative vote of five Owners of the Association.

12.5 Grandfathering Provision for Lot 61-A. Notwithstanding any provision of this Declaration to the contrary, Lot 61A, presently or to be owned by Donald Victor Welly and wife, Donna T. Welly, and known by its street address of 1 Thagard Lane, Whispering Pines, NC 28327, is not bound by any of the provisions of this Declaration which would otherwise relate to the size, location or Association approval of the residential dwelling and other permanent structures presently existing on said Lot 61A, provided that the other provisions of this Declaration relating to the use of said Lot 61A shall be binding upon such Lot, its present owners and their successors, heirs and assigns; and provided further that any future improvements to Lot 61A shall be subject to the terms and provisions of this Declaration.

12.6 Indemnification. Subject to the limitations and conditions set forth herein, each Owner who serves as a member of the Executive Board who was or is made a party or is threatened to be made a party in, pending action, suit or proceedings, whether civil, criminal, administrative, arbitratve or investigative (herein a "Proceeding"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a member of the Executive Board or while a member of the Executive Board, shall be indemnified by the Association to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Association to provide broader indemnification rights than said law permitted the Association to provide prior to such amendment) against judgments, penalties (including excise and

similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys' fees) actually incurred by such Owner in connection with such Proceeding, and such indemnification shall continue as to an Owner who has ceased to serve in the capacity which initially entitled such Owner to indemnity hereunder. The indemnification rights granted hereby shall be deemed contract rights, and no amendment, modification or repeal of this Declaration shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided herein may involve indemnification for negligence or under theories of strict liability.

A. **Advance Payment.** The right to indemnification conferred herein shall include the right to be paid or reimbursed by the Association for the reasonable expenses incurred by an Owner entitled to indemnification hereunder who was, is or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of a Proceeding, provided that such indemnification shall be made only upon delivery to the Association of a written affirmation by such Owner of his or her good faith belief that he has met the standard of conduct necessary for indemnification hereunder and a written undertaking, by or on behalf of such Owner, to repay all amounts so advanced if it shall ultimately be determined that such indemnified Owner is not entitled to be indemnified hereunder or otherwise.

B. **Nonexclusivity of Rights.** The right to indemnification and the advancement and payment of expenses conferred hereby shall not be exclusive of any other right which an Owner or other Person indemnified pursuant to this Declaration may have or hereafter acquire under any law (common or statutory) or by majority vote of disinterested Owners or otherwise.

C. **Indemnification of Officers, Employees and Agents.** The Association shall indemnify and advance expenses to an officer, employee or agent of the Association to the same extent and subject to the same conditions under which it does indemnify and advance expenses to members of the Executive Board under this Section 12.6.

D. **Member Notification.** To the extent required by law, any indemnification of or advance of expenses to an individual pursuant to this Section 12.6 shall be reported in writing to the Owners with or before the notice or waiver of notice of the next meeting of the Members of the Association or with or before the next submission to to such Members of a consent to action without a meeting and, in any case, within the twelve (12) month period immediately following the date of the indemnification or advance.

E. **Appearance as a Witness.** Notwithstanding any other provision of this Section 12.6, the Association may pay or reimburse expenses incurred by a member of the Executive Board or by persons who are not or were not members thereof, but who are or were serving at the request of the Executive Board as an employee, agent or similar functionary in connection with his appearance as a witness or other participant in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

F. **Savings Clause.** If this Section 12.6 or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the Association shall nevertheless indemnify and hold harmless each member of the Executive Board or any other person indemnified pursuant to this Section 12.6 as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Section 12.6 that shall not have been invalidated and to the fullest extent permitted by applicable law.

12.7 Amendment of Declaration. Except as expressly provided herein to the contrary, the covenants and restrictions of this Declaration may be amended only by and as provided in an instrument duly recorded in the Moore County Registry (i) executed by the Developer during the Developer Control

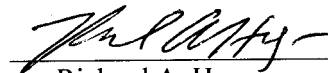
Period or (ii) executed thereafter by the Executive Board of the Association after approval of such amendment(s) by an affirmative vote of five (5) of the Owners of Lots within the Properties; provided, that no amendment shall be valid if contrary to law or if the same purports to limit or negate the rights of the Developer as provided herein.

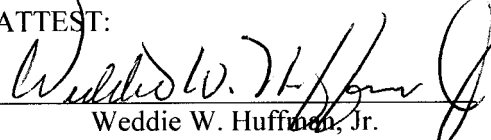
12.8 Amendments by Developer or Executive Board. The following amendments may be effected by the Developer, during the Developer Control Period, or by the Executive Board of the Association thereafter, without the affirmative vote of the Owners/Members otherwise required by Section 12.7:

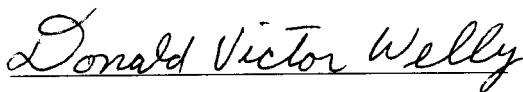
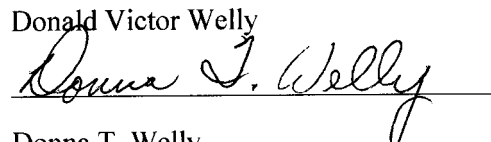
- a. Prior to the sale of the first Lot, the Declaration may be amended by the Developer.
- b. Declarant may amend this Declaration to effect the addition of lands as provided in Section 11.2.
- c. Developer or the Executive Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction.
- d. Developer, during the Developer Control Period, shall have the right to amend this Declaration to conform to the requirements of any applicable law or governmental regulation or the rulings of any governmental agencies having jurisdiction; or, to qualify the Properties or any Lot(s) and improvements therein for mortgage or improvement loans made, insured or guaranteed by a government agency; or, to comply with the requirements of law or regulations of any quasi-governmental corporation or agency, upon a letter from any such corporation or agency requesting or suggesting that an amendment is necessary to comply with the requirements of such corporation or agency.
- e. The Developer, during the Developer Control Period, and thereafter the Executive Board, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Properties or any portion thereof for tax-exempt status.
- f. The Developer, during the Developer Control Period, and thereafter the Executive Board, may amend this Declaration to include any platting change of the Properties as permitted herein.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name(s) by the authorized signatories below, as of the date first written above.

THAGARD POINT, LLC (SEAL)

By: 
Richard A. Horgan
Title: Member/Manager

ATTEST: 
Weddie W. Huffman, Jr.
Title: Member/Manager


Donald Victor Welly

Donna T. Welly

SEAL-STAMP



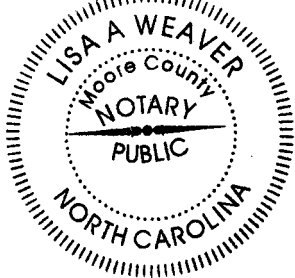
NORTH CAROLINA, MOORE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Weddie W. Huffman, Jr., personally known to me or who produced his North Carolina driver's license No. NCPL 232 1701, personally came before me this day and acknowledged that he is a Member/Manager of Thagard Point, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of said company, the foregoing instrument was signed in its name by Richard A. Horgan, one of its Member/Managers, sealed with its company seal and attested by Weddie W. Huffman, Jr., as its Member/Manager on ~~November 27~~, 2012.

Witness my hand and official stamp, this 27 day of ~~November~~, 2012.

Elizabeth L Featherston, Notary Public
My Commission expires 11/20/2015.

SEAL/STAMP



NORTH CAROLINA, MOORE COUNTY

I, LISA A WEAVER, the undersigned Notary Public, do hereby certify that Donald Victor Welly and Donna T. Welly, each of whom is personally known to me or each of whom produced their respective North Carolina driver's license for identification, each appeared before me this date and each of them acknowledged the execution of the foregoing instrument on said date.

WITNESS my hand and notarial seal/stamp this 21st day of November, 2012.

Lisa A. Weaver, Notary Public

My Commission expires: 11-27-2015