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STATE OF NORTH CAROLINA

COUNTY OF PENDER

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

**FOR**

**INDIGO AT ABBEY PRESERVE**

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DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS

FOR

INDIGO AT ABBEY PRESERVE

PENDER, NORTH CAROLINA

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THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR INDIGO AT ABBEY PRESERVE (this “Declaration”) is made by Clayton Properties Group, Inc., a Tennessee corporation, doing business as Mungo Homes (the “Declarant” or the “Developer”).

**THE DEVELOPER EXPRESSLY RESERVES THE RIGHTS TO AMEND AND TO RESTATE THIS DECLARATION WITHOUT THE CONSENT OF AN OWNER, THEIR MORTGAGEE(S) OR THE ASSOCIATION FROM TIME TO TIME FOR SO LONG AS THE DEVELOPER OWNS ANY PORTION OF THE PROPERTY (AS DEFINED HEREIN). ANY SUCH AMENDMENT OR RESTATEMENT MAY CONTAIN ADDITIONAL RESTRICTIONS OR OBLIGATIONS AFFECTING THE USE OF THE COMMON AREA, A LOT, AREA OF EXTENDED LOT OWNER RESPONSIBILITY (AS SUCH TERMS ARE DEFINED HEREIN) OR ANY OTHER SUCH PORTION OF THE PROPERTY. ANY SUCH AMENDMENT OR RESTATEMENT MAY ALSO AFFECT AN OWNER’S OBLIGATIONS AS A MEMBER OF THE ASSOCIATION. EVERY PURCHASER OR GRANTEE OF ANY LOT OR COMMON AREA NOW AND HEREINAFTER DESIGNATED, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE THEREOF, ACKNOWLEDGES NOTICE OF THE DEVELOPER’S RIGHTS TO AMEND AND TO RESTATE THIS DECLARATION, AND THAT THEIR RIGHTS ARE SUBJECT TO CHANGE. ANY SUCH AMENDMENT OR RESTATEMENT SHALL BE APPLICABLE TO AND BINDING UPON THE OWNERS AND THE LOTS. AT THE OPTION AND SOLE DISCRETION OF THE DEVELOPER, ANY SUCH AMENDMENT OR RESTATEMENT MADE BY THE DEVELOPER MAY APPLY: (I) UPON THE DAY OF EXECUTION OR RECORDING OF SUCH AMENDMENT OR RESTATEMENT DECLARATION; (II) RETROACTIVELY TO THE DATE OF THIS DECLARATION OR TO SOME OTHER SPECIFIED DATE IN SUCH AMENDMENT OR RESTATEMENT; OR (HI) PROSPECTIVELY TO SOME SPECIFIED DATE IN SUCH AMENDMENT OR RESTATEMENT. CERTAIN RIGHTS OF THE DEVELOPER SET OUT IN THE DECLARATION SHALL CONTINUE AFTER THE DEVELOPER NO LONGER OWNS ANY OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE RIGHT OF REESTABLISHING ITS CLASS “B” MEMBERSHIP IF AND WHEN IT RE ACQUIRES ANY OF THE PROPERTY OR ANNEXES ANY ADDITIONAL LAND TO THE PROPERTY.**

## RECITALS

A. The Developer is the owner of the real property described in Exhibit A of this Declaration, and desires to develop thereon a Community which may be made up of Neighborhoods, if and when designated, and which may include common lands and facilities, for the sole use and benefit of the Owner of each Lot to be located in such Community or a Neighborhood, if and when designated, within the Community.

B. The Developer has acquired or may from time to time acquire additional real property which it may desire to develop as additional phases of the Community which the Developer may incorporate as additional phases of this Community and bring same under this Declaration.

C. The Developer is desirous of maintaining control of design criteria, Improvement location, Plans and construction specifications, and other controls to assure the integrity of the Community or each Neighborhood, if and when designated, within the Community. Each purchaser of a Lot or Dwelling in the Community will be required to maintain, modify, change, and construct the Dwelling or as such are subsequently modified as herein provided, and any Improvement in accordance with the design criteria contained herein and established by the Architectural Control Authority as hereinafter provided.

D. The Developer desires to provide for the preservation of the value and amenities in the Community and for the maintenance of the common lands and facilities, if any.

E. The Developer desires to subject the real property described in Exhibit A to the covenants, conditions, restrictions, easements, charges, and liens, hereinafter set forth and to the guidelines, policies, procedures, rules and regulations adopted by the Developer, the Board of Directors, When Empowered, or the Architectural Control Authority, When Empowered, for each Neighborhood, if and when designated, or the Community as a whole. Each and all of which (i) is and are binding upon the Community and each Owner, (ii) is and are for the sole benefit of the Developer for so long as it owns any portion of the Property and if the Developer re-acquires any portion of the Property or if Developer annexes any additional land to the Property even if this occurs after the Developer no longer owns any of the Property, and thereafter for the sole benefit of the Association, and (iii) shall run with the title to the land.

F. The Developer has deemed it desirable, for the efficient preservation of the values of and the amenities in the Community, to create the Association to which will be delegated and assigned as further described herein, the powers of (i) maintaining and administering any Common Area or Area of Common Responsibility, (ii) administering and enforcing the Declaration; (iii) establishing and amending the reasonable rules, regulations and policies for the proper management of the Association and for the promotion of the health, safety and welfare of the residents of the Community; and (iv) levying, collecting and disbursing the Assessments and charges hereinafter created. The Developer may assign or delegate, either permanently or temporarily, any or all of the foregoing powers to one or more entities or persons without notice to or the consent of any Owner.

G. The Developer has caused or will cause the Association to be incorporated under the laws of the State of North Carolina, as a nonprofit corporation, for the purpose of exercising the aforesaid functions, among others.

H. The Developer desires that certain of its rights under the Declaration continue after the Developer no longer owns any of the Property or any additions thereto.

NOW, THEREFORE, pursuant to Chapter 47F of the North Carolina General Statutes, the Developer declares that the real property described in Exhibit A, annexed hereto and forming a part hereof, and any additions thereto which the Developer may incorporate from time to time in the Community is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth which shall run with the title to the land and all Lots therein and which shall be binding on all Owners.

## ARTICLE I: DEFINITIONS

### Section 1.1 DEFINITIONS.

The following capitalized words when used in this Declaration or any supplement hereto (unless the context clearly demonstrates otherwise) shall have the following meaning:

A. “ADDITIONAL ASSOCIATIONS” when and if created, shall mean and refer to any other separate association owning land within the Property, or being given authority to control, manage or maintain portions of the Property owned or maintained by the Association.

B. “ARCHITECTURAL CONTROL AUTHORITY (IES)” shall mean and refer to the Developer, any appointees of the Developer, or any architectural control boards or committees appointed by the Developer, while the Developer retains all or part of the rights and authority for architectural control in the Community, and the Board of Directors, When Empowered, or any architectural control boards or committees which may be appointed by the Board of Directors, When Empowered.

C. “ARCHITECTURAL GUIDELINES” shall mean and refer to the set of policies, rules and procedures which may be promulgated and/or amended by the Architectural Control Authority, from time to time, which shall act as a guide for the architectural control and review process and for the maintenance, construction or renovation of Improvements in each Neighborhood, if and when designated, and within the Community. Failure to publish any Architectural Guidelines shall not diminish the architectural control and review authority of the Architectural Control Authority, as set forth in this Declaration.

D. “AREA OF COMMON RESPONSIBILITY” shall mean and refer to any Common Area, together with those areas, if any, the Developer or the Board of Directors, When Empowered, has established pursuant to the terms of this Declaration, any supplemental declaration, any Cost Sharing Agreement, Regulations or other applicable covenant, contract, or agreement. The location and dimensions of the Area of Common Responsibility may be established, adjusted, or eliminated by the Developer and thereafter by the Board of Directors, When Empowered, in accordance with the provisions hereof.

E. “AREA OF EXTENDED LOT OWNER RESPONSIBILITY” shall mean and refer to (i) that portion of the road right-of-way, whether owned by the Developer, the Association, or any applicable governmental entity, extending from the end of the road’s curbing (or the end of the pavement itself, if no curbing exists) to any property line of a Lot that is contiguous to the road and (ii) if applicable, that portion of the Pond bank, whether owned by the Developer, the Association, or any applicable governmental entity, extending from the waterline of the Pond to any property line of a Lot that is contiguous to the Pond. Unless designated as Common Area or unless the Association has assumed maintenance responsibility for this area as part of its Area of Common Responsibility, each Owner shall be responsible for the maintenance and proper use of their corresponding Area of Extended Lot Owner Responsibility pursuant to the provisions of this Declaration, including without limitation obtaining appropriate Architectural Control Authority approvals, in addition to any other applicable governmental approvals, that may be required for any and all Improvements and landscaping built upon or located in the Area of Extended Lot Owner Responsibility; in that regard, the maintenance required by the applicable Owner for the portion of the Pond Bank extending from the waterline of the Pond to any property line of a Lot that is contiguous to the Pond shall be limited to mowing of the grass and other vegetation. All remedies available to the Developer and the Association, When Empowered, for the failure of an Owner to properly maintain, use, or construct or locate Improvements upon a Lot shall also be available to the Developer and the Association, When Empowered, for the failure of an Owner to properly maintain, use, or construct or locate Improvements upon the Area of Extended Lot Owner Responsibility, as provided for in this Declaration. Said authority of the Developer and the Association, When Empowered, to control the Areas of Extended Lot Owner Responsibility is subordinate to the authority and approval of any property owner or applicable governmental entity possessing rights over or ownership of the Areas of Extended Lot Owner Responsibility. The responsibility of the Owner or Association to maintain the Area of Extended Lot Owner Responsibility does not create an ownership interest in any portion of the respective Pond and/or Pond bank or the portion of the road right-of-way which extends from the end of the road’s curbing (or the end of the pavement itself, if no curbing exists) to any property line of a Lot that is contiguous to the road nor does the creation of such responsibility by this Declaration or the Regulations: (a) provide any Lot Owner with the authority to restrict in any way the use of any portion of the road right-of-way, the sidewalks or the Pond and/or Pond bank by the Association or its Members or the normal use of the sidewalks or right-of-way by the general public, or (b) provide the Association with the authority to restrict in any way the normal use of the sidewalks or road right-of-way by the general public where the same is dedicated to a governmental authority or owned by the Developer. Unless otherwise restricted by a public body, governmental body, district agency or authority, where the road right-of-way, sidewalk or Pond is located upon a Common Area, the Association may restrict such use and access by the general public or any Lot Owner. The Association shall be authorized both to request and accept on behalf of all Lot Owners in the Community any licenses or permits that may be necessary or required by a governmental authority to facilitate such maintenance responsibility by the Association or Lot Owners.

F. “ARTICLES OF INCORPORATION” shall mean and refer to the Articles of Incorporation of the Association filed with the Office of the Secretary of State of North Carolina, as the same are or hereafter may be amended from time to time. A copy of the Articles of Incorporation are attached hereto and incorporated herein as Exhibit B.

G. “ASSESSMENTS” shall have the meaning specified in Article VII.

H. “ASSOCIATION” shall mean and refer to Indigo at Abbey Preserve Homeowners’ Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

I. “ASSOCIATION NOTE” shall have the meaning specified in Article III.

J. “BOARD OF DIRECTORS” or “BOARD” shall mean and refer to the board of directors of the Association.

K. “BUILD-OUT” shall have the meaning specified in Section 7.2(b).

L. “BYLAWS” shall mean and refer to the bylaws of the Association, which such Bylaws are attached hereto and incorporated herein as Exhibit C.

M. “COMMERCIAL VEHICLE” shall mean and refer to cars, pick-up trucks and vans in styles normally used for private purposes but painted with or carrying commercial advertising, logos, or business names or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle or that extend beyond the length or width of the vehicle.

N. “COMMON AREA” shall mean and refer to those areas of land within the Property, the location and dimensions of which may be established, modified, or adjusted by the Developer as set forth herein, shown as “Common Area” on any recorded Plats of the Property or so designated in any conveyance to the Association by the Developer including, but not limited to, any and all Improvements thereon or the furniture, fixtures or equipment thereon, entrance signs, lights, sprinklers, shrubs, landscaping, parking places, drainage or other easements used, owned or maintained by the Association or the Developer for the benefit of the Community, whether or not located within the street rights-of-way which have been dedicated to a governmental agency or a Lot. Such areas are intended to be devoted to the common use and enjoyment of Members of the Association, subject to the Regulations established and amended from time to time and the reserved rights of the Developer and the Association, and are not dedicated for use by the general public. NO REPRESENTATION FROM ANY PARTY OR SALES AGENT, INCLUDING THOSE OF THE DEVELOPER, OR OTHER ENTITY AS TO THE EXISTENCE OF A COMMON AREA, SIZE, SHAPE, OR COMPOSITION OF ANY COMMON AREA OR ACCESS LOCATION, OTHER THAN THOSE PROVIDED HEREIN OR PROVIDED IN WRITING BY THE DEVELOPER, SHALL BE RELIED UPON, NOR SHALL IT IN ANY WAY REQUIRE THE DEVELOPER TO COMPLY WITH THAT REPRESENTATION. The Community may, but shall not be required to, contain Common Area, and the fact that there are provisions in this Declaration referencing Common Area does not mean there is or will be Common Area in the Community. The Developer or the Association, When Empowered, may restrict Common Area located within a Specific Purpose Area for the exclusive use and enjoyment of only those Owners who own Lots in the Specific Purpose Area.

O. “COMMUNITY” shall mean and refer to the subdivided Property.

P. “COST SHARING AGREEMENT” shall mean and refer to any agreement between or among the Developer, the Association and/or a third party pursuant to which the Association or the

Developer and/or such third party agree to share the cost of the construction, modification, maintenance, operation or other aspect of an Improvement or Area of Common Responsibility benefiting, directly or indirectly, the Developer and/or the Association and/or its Members, and/or the third party. A Cost Sharing Agreement shall include, but shall not be limited to, a cross-use agreement or easement between the Association or the Developer and/or the third party pursuant to which (a) the Association or the Developer grants the third party and/or its members or affiliates access to or use of the Association's Common Area, including amenities, roads or other rights of way, or (b) the third party grants the Association and/or its Members access to or use of the common areas, including amenities, roads or other rights of way of such third party.

Q. "COSTS OF COLLECTION" shall have the meaning specified in Section 7.1(a).

R. "CURRENT DEFICIT" shall mean the amount by which the expenditures and budgeted reserves of the Association for a budget year exceed the receipts of the Association for any budget year, including, but not limited to, receipts from Assessments, contributions from the Developer and application of funds collected as Assessments for Working Capital, plus the amount of any Assessments due but unpaid from any Owner other than the Developer.

S. "DECLARATION" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens, along with any amendment or modification hereof, and any supplements hereto.

T. "DEVELOPER" shall mean and refer to Clayton Properties Group, Inc., a Tennessee corporation, doing business as Mungo Homes, its successors and assigns and its affiliates and subsidiaries; provided such successors and assigns, affiliates and subsidiaries are designated as such by the Developer. The Developer may make partial or multiple assignments of its rights under this Declaration. All such assignees shall be deemed to be the Developer only as to those rights which have been assigned to them, including, without limitation, any continuing rights of Developer after the Developer's Class "B" Membership has converted to a Class "C" Membership as set forth in this Declaration.

U. "DEVELOPER IMPROVEMENTS" shall mean and refer to that portion of the Common Area that are Improvements constructed by or on behalf of the Developer.

V. "DIRECTOR" shall mean and refer to an appointed or elected member of the Board of Directors.

W. "DWELLING" shall mean and refer to a single-family home, patio home, garden home, townhouse, condominium unit, or apartment, if constructed in the Community.

X. "FENCING" shall have the meaning specified in Section 2.17.

Y. "FIRST LIEN MORTGAGEE" shall mean and refer to a bank, mortgage company or other institution in the business of loaning money that holds a first priority mortgage or deed of trust on a Lot or Dwelling in the Community.

Z. “IMPROVEMENT” shall mean and refer to any thing or object upon any portion of the Property including by way of illustration and not limitation, any Dwelling or building or part thereof, garage, porch, shed, mailbox, greenhouse, or bathhouse, coop or cage, covered or uncovered patio, siding, doors, fixtures, equipment, and appliances (including without limitation the heating and air-conditioning system for the Dwelling), furniture, glass, lights and light fixtures (exterior and interior), awnings, window boxes, window treatments, window screens, screen or glass-enclosed porches, balconies, decks, chutes, flues, ducts, conduits, wires, pipes, plumbing, and other like apparatus, playgrounds, playground equipment, tree houses and yard art, statuary, basketball goals (permanent or temporary), or other temporary or permanent sports equipment, swimming pool, fence, curbing, paving, driveways, walkways, wall or hedge, radio, television, wireless cable, or video antenna, satellite dishes, yard, lawn, landscaping, trees, shrubs, bushes, grass, well, septic system, sign, appurtenance, or signboard, whether temporary or permanent; any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of waters from, through, under or across any portion of the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any portion of the Property; and any change in the grade of any portion of the Property of more than six (6) inches. The foregoing items are listed only as examples of items that would constitute Improvements, if constructed or located on the Property, and their inclusion in this definition does not imply that each such item will be approved by the Architectural Control Authority or constructed by the Developer or any other person or otherwise exist on the Property.

AA. “LENDER” shall mean the holder of any recorded Deed of Trust, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. As used in this Declaration, the term “Institutional Lender” or “Institutional Holder” shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), all corporations and any agency or department of the United States Government or of any state or municipal government, or any other organization or entity which has a security interest in any Lot. In the event any Deed of Trust is insured by the Federal Housing Administration (“FHA”) or guaranteed by the Veterans Administration (“VA”), then as to such Deed of Trust the expressions “Lender” and “Institutional Lender” include the FHA or the VA as the circumstances may require, acting, respectively, through the Federal Housing Commission and the Commissioner of Veterans' Benefits or through other duly authorized agents.

BB. “LOT” shall mean and refer to any tract or parcel of the Property (together with such Improvements or Dwellings as may be erected or placed thereon) described as a “Lot” on any Plats or otherwise designated as a “Lot” by the Developer by recorded instrument or by written notice to the Association, but specifically excluding any Common Area, Area of Extended Lot Owner Responsibility, Area of Common Responsibility and the streets and road rights-of-way in the Community.

CC. “MASTER PLAN” shall mean and refer to the drawing, sketch, map, or planned unit development plan that represents the conceptual land plan for the future development of the Community. Since the concept of the future development of the undeveloped portions of the Community, including without limitation the Lots, streets or road rights-of-way and any Common Area, are subject to continuing

revision and change at the discretion of the Developer; present and future references to the “Master Plan” shall be references to the latest revision thereof. In addition, no implied reciprocal covenants or obligation to develop shall arise with respect to lands that have been retained by the Developer for future development. **THE DEVELOPER SHALL NOT BE BOUND BY ANY MASTER PLAN, USE OR RESTRICTION OF USE SHOWN ON ANY MASTER PLAN, AND MAY IN ITS SOLE DISCRETION AT ANY TIME CHANGE OR REVISE SAID MASTER PLAN, DEVELOP OR NOT DEVELOP THE REMAINING UNDEVELOPED PROPERTY OR COMMON AREA OR AMENITIES SHOWN ON ANY MASTER PLAN.**

DD. “MEMBER” shall mean and refer to any Owner, as provided in Article III hereof.

EE. “NEIGHBORHOODS” when and if designated, shall mean and refer to any specific group of Lots and/or Common Area and/or streets and road rights-of-way located within the Property identified as a distinct Neighborhood by the Developer or the Association, When Empowered. The Members of any and all Neighborhoods are Members of the Association, if created, and the Neighborhood exists under authority granted by the Developer or the Association. A Neighborhood is not a Specific Purpose Area; however, the same portion of the Property may be designated a Neighborhood and a Specific Purpose Area.

FF. “OWNER” shall mean and refer to the record owner or owners, whether one (1) or more persons or entities, of the fee simple title to any of the Lots but shall not mean or refer to any mortgagee or subsequent holder of a mortgage/deed of trust unless and until such mortgagee or holder has acquired title to the Lot pursuant to foreclosure or any proceedings in lieu of the foreclosure. Said term “Owner” shall also refer to the heirs, successors, and assigns of any Owner.

GG. “PARCEL” shall mean a separately described subdivision of the Property, (not an individual Lot which is part of a Subordinate Regime), which may be held as a separate tract or which may be submitted to the provisions of a Subordinate Declaration (as herein defined). Upon submission of additional phases to a Subordinate Regime, the Parcel or Parcels or portions thereof upon which the additional phase or phases is submitted shall be deemed joined with all phases previously submitted to such Subordinate Regime in order to constitute one Parcel. With regard to any Sub-Association which is a within a horizontal property regime established pursuant to the North Carolina Condominium Act, all of the Units and Common Areas (now or hereafter existing) of such horizontal property regime shall constitute a Parcel. Furthermore, if an easement exists on all or a portion of a Parcel as an appurtenance to another Parcel, such appurtenant easement shall also be considered a part of the Parcel to which the easement is appurtenant.

HH. “PERMITTEES” shall mean and refer to the respective family, agents, customers, invitees, licensees, employees, servants, contractors, tenants and tenant’s agents, customers, invitees, licensees, employees, servants and contractors of each Owner, subject to applicable Regulations.

II. “PLANS” shall mean and refer to and encompass the plans, specifications, elevations and exterior designs of any Improvement built or to be built on any Lot, or any Common Area, a site plan showing building setbacks and locations of all Improvements, and any other items so designated in the Architectural Guidelines, builder guidelines, or by the Architectural Control Authority.

JJ. “PLATS” shall mean and refer collectively to those certain plat(s) depicting all or a portion of the Property recorded in the Register of Deeds from time to time, each as amended, modified, supplemented, restated or superseded from time to time. Where a preliminary plat has been replaced by a final plat, the term “Plats” shall include only the final plat.

KK. “PONDS” shall have the meaning specified in Section 2.21.

LL. “PROPERTY” shall mean and refer to all property, including but not limited to, the Lots, streets or road rights-of-way and Common Area, subjected to this Declaration, which is described in Exhibit A, together with any additional land that may be developed pursuant hereto and annexed or incorporated in the Property by amendments or supplemental Declarations.

MM. “REGISTER OF DEEDS” shall mean and refer to the office of the Register of Deeds or Register of Mesne Conveyances, as applicable, in the county in which the Property is located.

NN. “REGULATIONS” shall mean and refer to the rules, and regulations adopted by the Developer or the Board of Directors, When Empowered, for the Community, for each Neighborhood or Specific Purpose Area, if and when designated, and for any portion of the Property. Regulations shall not include policies, procedures, guidelines, Architectural Guidelines, or principle positions, strategies, or conduct of the Association.

OO. “RELEASED PARTIES” shall have the meaning specified in Section 2.21.

PP. “SPECIAL SERVICES ASSESSMENTS” shall have the meaning specified in Section 7.8(a).

QQ. “SPECIFIC PURPOSE AREA” when and if created, shall mean and refer to any specific group of Lots and/or Common Area and/or streets and road rights-of-way located within the Property benefiting from or being provided distinct Special Services not otherwise provided to or for the rest of the Community, and specifically identified and designated as a Specific Purpose Area by the Developer or the Association, When Empowered. When designating a Specific Purpose Area, the Developer or the Association, When Empowered, shall either give notice of such designation to all Owners of Lots within the Specific Purpose Area or record an instrument evidencing such designation with the Register of Deeds. Owners of Lots within a Specific Purpose Area are Members of the Association and the Specific Purpose Area exists under authority granted by the Developer or the Association. A Specific Purpose Area is not a Neighborhood; however, the same portion of the Property may be designated a Neighborhood and a Specific Purpose Area. The Lots and/or Common Area and/or streets and road rights-of-way identified in a Specific Purpose Area may, but need not be, contiguous.

RR. “SPECIFIC PURPOSE ASSESSMENTS” shall have the meaning specified in Section 7.7(a).

SS. “SPECIFIC PURPOSE COMMITTEE” when and if created, shall mean and refer to a committee of Lot Owners within a Specific Purpose Area appointed by the Board of Directors, or at the

option of the Board of Directors, elected by those Members located in the Specific Purpose Area, for any purpose determined by the Board of Directors, including but not limited to the creation for approval by the Board of Directors of a proposed budget and Specific Purpose Assessment for the Specific Purpose Area. The designation of a Specific Purpose Area does not require the creation of a Specific Purpose Committee.

TT. “SPECIAL SERVICES” shall mean and refer to those services, if and when provided by the Developer or the Association as determined in the sole discretion of the Developer or the Board, When Empowered, from time to time, to some or all Owners of the Dwellings or Lots in the Community and so designated from time to time by the Developer or the Board, When Empowered. The Special Services may include, but are not limited to: labor; equipment; materials; management and supervision of the Special Services; shared insurance coverage for all or some of the Dwellings; landscaping maintenance, repair and replacement for all or some of the Lots; drainage maintenance, repair or replacement for all or some of the Lots; common roof maintenance, repairs and replacement for all or some of the Dwellings; exterior maintenance of some or all of the Dwellings, any specific portion of a Lot, or some or all of the Lots; pressure cleaning of some or all of the Dwellings; garbage service for some or all of the Lots; and security monitoring for all or some of the Lots and Dwellings. In addition to other funding available to the Association or Assessments levied by the Association, at the discretion of the Developer or the Board, When Empowered, the cost of Special Services may be funded by Regular Assessments, Specific Purpose Assessments or Special Services Assessments levied by the Association, without the consent of the Owners of the Lots or their mortgagees. The Special Services may be provided, increased, decreased, changed, suspended or terminated in the sole discretion of the Developer or the Board, When Empowered, without the consent of the Owner or their mortgagees. No Owner shall be exempt from paying the Regular Assessments, Specific Purpose Assessments, Special Services Assessments, or other Assessments as defined in Section 7.1, nor shall the amount of the Regular Assessments, Specific Purpose Assessments, Special Services Assessments or other Assessments be reduced because any Owner refuses such services or provides or arranges for others to provide all or some of the Special Services, other than as specifically provided in this Declaration. The Developer shall have the right to veto the decision of the Board, When Empowered, to provide any or all Special Services, so long as it owns property in the Community or has Class “B” voting rights. Nothing herein shall require the Developer or the Association to provide any Special Services.

UU. “SUB-ASSOCIATIONS” when and if created, shall mean and refer to any other Additional Associations within a Parcel subject to this Declaration and created by a Subordinate Declaration, all of which operates under authority granted by the Developer or the Association. The establishment of Neighborhoods, Neighborhood Architectural Control Authorities, Specific Purpose Areas, or Specific Purpose Committees, if and when designated, shall not be construed as creating Sub-Associations, unless expressly created and recognized as such by the Developer or the Association, When Empowered.

VV. “SUBORDINATE DECLARATION” shall mean and refer to any Declaration of Condominium recorded with respect to any Parcel submitting such Parcel to the provisions of the North Carolina Condominium Act or a Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens or similar document encumbering a Parcel.

WW. “SUBORDINATE REGIME” shall mean a condominium which is established by the recording of a Declaration of Condominium submitting a Parcel or Parcels which are subject to this Declaration to the North Carolina Condominium Act or a commercial or residential development pursuant to a Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens (or similar document creating a Subordinate Regime) established on a Parcel.

XX. “UNIT” shall mean (i) a unit within a horizontal property regime established on a Parcel pursuant to the North Carolina Condominium Act, or (ii) a separate parcel of land within a Subordinate Regime capable of independent and separate ownership on which there is or may be erected a residential dwelling structure or commercial structure

YY. “WHEN EMPOWERED” shall mean when the Developer has transferred the right of performing some function to the Board of Directors or another entity (i) by the recordation of a document with the Register of Deeds, (ii) by giving written notice to the Association at the Association’s address of record, or (iii) by giving notice to the Owners attending a duly called meeting for that purpose. Except for those rights retained by the Developer in this Declaration, including, without limitation, Developer’s rights as a Class “C” Member and any Class “B” Membership rights restored to the Developer for Lots that it re-acquires or additional land annexed to the Property after the termination of the Class “B” Membership, the transfer of all functions to the Association shall automatically occur upon termination of Developer’s Class “B” Membership. “When Empowered” shall also mean and refer to when the Developer has temporarily delegated (as opposed to transferred) the right of performing some function to the Board of Directors, the Members, or to any other person or entity, which Developer may do without any recording or notice requirements.

ZZ. “WORKING CAPITAL” shall have the meaning specified in Section 7.5.

## ARTICLE II: USES OF PROPERTY, RESTRICTIONS AND EASEMENTS

### Section 2.1 RESIDENTIAL USE OF PROPERTY.

Unless otherwise designated in a supplemental Declaration filed by the Developer for additional land annexed to the Community, all Lots and Dwellings shall be used for single-family residential purposes only, and no commercial, business or business activity shall be carried on or upon any Lot at any time, except with the written approval of the Developer or the Board of Directors, When Empowered; provided, however, that nothing herein shall prevent the Developer, its agents, representatives, employees, or any builder of homes in the Community, approved by the Developer, from using any Lot owned or leased by the Developer or such builder of homes for the purpose of carrying on business related to the Community or related to the improvement and sale of Lots or Dwellings in the Community; operating a construction office, business office, sales office or model home, and displaying signs, and from using any Lot for such other facilities as in the sole opinion of the Developer may be required, convenient, or incidental to the completion, improvement, and sale of the Lots, Dwellings, or the Community; and provided further that, to the extent allowed by applicable zoning laws, “home occupation,” as may be defined in the Regulations or in the zoning ordinances of the governmental authority having jurisdiction over the Lot, may be maintained in a Dwelling located on any of the Lots as approved in writing by the Developer or the Board of Directors,

When Empowered, and the governmental authority having jurisdiction over the Lot, so long as the “home occupation” complies with any and all conditions of such approvals.

Section 2.2     CONSTRUCTION IN ACCORDANCE WITH PLANS.

EXCEPT AS PROHIBITED BY LAW, INCLUDING WITHOUT LIMITATION 47 U.S.C. § 303 NT, AND RELATED FCC RULES, 47 CFR § 1.4000 (WHICH LIMITS, BUT DOES NOT ENTIRELY PROHIBIT, CONTROL BY THE ASSOCIATION OF THE SIZE AND LOCATION OF ANTENNAS AND SATELLITE DISHES), NO IMPROVEMENT SHALL BE CONSTRUCTED, ERECTED, MAINTAINED, STORED, PLACED, REPLACED, CHANGED, MODIFIED, ALTERED OR IMPROVED ON ANY LOT OR AREA OF EXTENDED LOT OWNER RESPONSIBILITY UNLESS APPROVED BY THE ARCHITECTURAL CONTROL AUTHORITY AND ANY OTHER APPROPRIATE OWNER OR APPLICABLE GOVERNMENTAL ENTITY AND THE USE OF APPROVED IMPROVEMENTS SHALL COMPLY WITH THE DECLARATION AND REGULATIONS IN EFFECT FROM TIME TO TIME. NO CONSTRUCTION, RECONSTRUCTION, ERECTION, REPAIR, CHANGE, MODIFICATION SHALL VARY FROM THE APPROVED PLANS. Notwithstanding any thing herein to the contrary, (a) until the termination of the Developer’s Class “B” Membership, the Developer reserves the right to construct or modify any Improvements without submitting Plans to the Architectural Control Authority and without the approval of the Association, the Members or the Architectural Control Authority, and (b) if, after termination of Developer’s Class “B” Membership, Developer reacquires a Lot through repurchase, foreclosure or otherwise and (c) if after termination of Developer’s Class “B” Membership, Developer annexes additional property to the Community, Developer reserves the right to construct or modify any Improvements on such Lot and additional property without submitting Plans to the Architectural Control Authority and without the approval of the Association, the Members or the Architectural Control Authority.

Section 2.3     SUBDIVISION/COMBINATION OF LOTS AND ROAD USAGE.

One or more Lots or parts thereof may be subdivided or combined only if approved in writing by the Developer. No Lot or Common Area may be used as a road unless approved in writing by the Developer, before or after termination of Developer’s Class “B” Membership.

Section 2.4     LIVESTOCK AND PETS.

Unless the following is amended by the Regulations established and amended by the Developer or by the Board of Directors, When Empowered, from time to time, no animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or Area of Extended Lot Owner Responsibility, except that dogs, cats or other small household pets may be kept in reasonable numbers as determined by the Developer or the Board of Directors, When Empowered, in its sole discretion, subject to applicable leash laws, provided that they are not kept, bred or maintained for any commercial purpose. Such household pets must not constitute a nuisance as determined by the Board of Directors in its sole discretion within the Community or cause unsanitary conditions within the Community, and no animal kept outside the Dwelling shall be kept in a manner which disturbs the quiet enjoyment of the Community or any other Owner. While not in a fully confined area, all pets shall be restrained by leashes and no pet shall enter upon any Lot or

Area of Extended Lot Owner Responsibility without the express permission of that Owner or on the Common Area without express permission of the Developer or the Board of Directors, When Empowered. The pet owner will be responsible for cleanup and removal of fecal matter deposited by such pet and shall be liable for, indemnify and hold harmless any other Owner, the Developer and the Association from any loss, cost, damage or expense incurred by such Owner, the Developer or the Association as a result of any violation of this provision.

Section 2.5     OFFENSIVE ACTIVITIES.

Unless the following is amended by the Regulations established and amended by the Developer or by the Board of Directors, When Empowered, from time to time, no noxious, offensive or illegal activities as determined by the Developer or the Board of Directors, When Empowered, shall be carried on upon any Lot, Area of Extended Lot Owner Responsibility, Common Area, or street and road right-of-way, nor shall any thing be done thereon which is or may become an annoyance or nuisance to any Owner in the Community, including without limitation nuisances of a permanent or temporary nature, occurring on an intermittent or continual basis, and those that are a nuisance to one or more Owners in the Community.

Section 2.6     TRAILERS, TRUCKS, BUSES, BOATS, PARKING, ETC.

Unless the following is amended by the Regulations established and amended by the Developer or by the Board of Directors, When Empowered, from time to time, no passenger vehicles, buses, trailers, mobile homes, Commercial Vehicles, motorcycles, boats, boat trailers, all-terrain vehicles, go-carts, campers, vans or vehicles on blocks, unlicensed vehicles, or like vehicles shall be kept, stored, used, or parked overnight either on any street within the Community, in the Common Area, or on any Lot or Area of Extended Lot Owner Responsibility, without the approval of the Developer or the Board of Directors, When Empowered; provided, however, that passenger vehicles may be parked in approved areas on a Lot, to include garages, paved driveways, and any other area approved by the Developer or the Board of Directors, When Empowered, or as specified in the Regulations. No unsafe parking shall be allowed on any streets in the Community. The Developer or the Board of Directors, When Empowered, may in its sole discretion determine what is unsafe and issue Regulations to control on and off-street parking. All parking spaces contained in the Common Area shall be subject to any parking Regulations created by the Developer or the Board of Directors, When Empowered. Notwithstanding anything to the contrary herein, this Section shall not Commercial Vehicles from being on the property temporarily (less than 24 hours) to provide services to the Association or an Owner.

Section 2.7     VEHICLE USAGE.

The Developer or the Board of Directors, When Empowered, may create Regulations governing the manner of usage and types of motor vehicles, including golf carts which may be used on the streets and roadways in the Community. All Owners and their Permittees shall comply with all such Regulations and all other applicable laws and regulations and shall operate their vehicles in a safe and reasonable manner.

Section 2.8     SEWAGE SYSTEM.

Sewage disposal shall be through the public or private system or by septic tank approved by appropriate State and local agencies. If there is a public or private system serving the Community, the Owner shall be obligated to use the system unless authorized otherwise by the Developer or the Board of Directors, When Empowered.

Section 2.9 WATER SYSTEM.

Water shall be supplied through a public or private system or any other system or well approved by appropriate State and local agencies. If there is a public or private system serving the Community, the Owner shall be obligated to use the system unless authorized otherwise by the Developer or the Board of Directors, When Empowered.

Section 2.10 UTILITY FACILITIES.

The Developer reserves the right to approve the necessary construction, installation and maintenance of utility facilities and service lines for, on, over or under the Property or any portion thereof, including but not limited to telephone, cable television, electricity, gas, water and sewage systems, which may be in variance with this Declaration or the Regulations.

Section 2.11 MINIMUM SQUARE FOOTAGE REQUIREMENT.

Unless otherwise stated in a document recorded with the Register of Deeds, the Developer may establish and amend minimum square footage requirements for Dwellings within the Community, which may differ for each Lot or group of Lots in the Community. The Developer or the Architectural Control Authority, When Empowered, shall have the right to approve or disapprove any multi-level Plan based solely on the amount of heated square footage contained within any level or floor and/or relationship of that level's or floor's footage to the total heated footage contained within the other levels of the Dwelling or Improvement or the Dwelling or Improvement in its entirety.

Section 2.12 BUILDING SETBACK REQUIREMENTS.

Unless the Developer or the Architectural Control Authority, When Empowered, waives the requirement or unless a setback is otherwise shown on any of the Plats recorded with respect to the Community or unless otherwise stated in a document recorded with the Register of Deeds, the approved exterior finished face, steps, eaves and overhangs of all Improvements, including but not limited to, approved Dwellings, buildings, garages, porches, sheds, greenhouses, bathhouses, terraces, patios, decks, stoops, wing walls, swimming pools and storage buildings for related equipment (including but not limited to filters and water pumps) shall be placed on the Lot so as to meet the criteria set forth by (a) an appropriate governmental authority, and (b) the Architectural Control Authority, which may differ for each Neighborhood, if and when designated, and for any additional phases of the Community.

Section 2.13 WAIVER OF SETBACKS, BUILDING LINES AND BUILDING REQUIREMENTS.

The Developer, the Board of Directors, When Empowered, or the Architectural Control Authority, When Empowered, may waive violations of the setbacks and building lines shown on one or more Plats recorded with respect to the Community; set out in this Declaration, or in the Regulations, or in any other building requirements established by the Architectural Control Authority. Such waiver shall be in writing. A document executed by the Developer or the Architectural Control Authority, When Empowered, shall be, when recorded, conclusive evidence that the requirements hereof have been complied with. The Developer or the Architectural Control Authority, When Empowered, may also, from time to time as they see fit, eliminate violations of setbacks and boundary lines by amending any of the Plats, or by granting a variance to other building requirements by written notice of such variance to the Lot Owner. Nothing contained herein shall be deemed to allow the Developer or the Architectural Control Authority, When Empowered, to waive violations which must be waived by an appropriate governmental authority without the Owner obtaining a waiver from such authority.

Section 2.14 YARD AND LANDSCAPING MAINTENANCE.

(a) In the event that the Owner of any residential Lot, improved or unimproved, fails to maintain their yard and overall landscaping of their Lot or Area of Extended Lot Owner Responsibility in a manner in keeping with the Declaration, as determined by the Developer or the Architectural Control Authority, When Empowered, from time to time as they see fit, the Developer or the Architectural Control Authority, When Empowered, may issue a compliance demand requiring the Owner of the residential Lot to bring the Lot or Area of Extended Lot Owner Responsibility into keeping with the Declaration, as determined by the Developer or the Architectural Control Authority, When Empowered. If the Owner of the residential Lot fails to comply within the time required by the notice, the Developer or the Association and their designees may enter upon the Lot or Area of Extended Lot Owner Responsibility, bring the Lot or Area of Extended Lot Owner Responsibility into keeping with the Community, as provided above, and levy against the Owner of the Lot an Assessment for Non-Compliance and such Assessment shall be a lien upon the Lot. The rights of the Developer under this Section 2.16 shall continue after termination of the Developer's Class "B" Membership.

(b) The responsibility of an Owner of a residential Lot to properly maintain their yard and overall landscaping of their Lot and Area of Extended Lot Owner Responsibility includes, but is not limited to, the following:

- i. prevent any underbrush, weeds, or other unsightly plants to grow upon the Lot and Area of Extended Lot Owner Responsibility;
- ii. provide permanent vegetation, including but not limited to grass, fully and uniformly distributed over the Lot and Area of Extended Lot Owner Responsibility;
- iii. unless approved otherwise by the Developer or the Board of Directors, When Empowered, maintain and (if they are determined to be unhealthy by the Developer or the Board of Directors, When Empowered) replace, any tree(s) or portions thereof and/or other vegetation upon the Lot or Area of Extended Lot Owner Responsibility or located within the road right-of-way, that (1) are specifically required to be removed or replaced by the

Developer or the Board of Directors, When Empowered, (2) were required by the Architectural Control Authority, to have been protected during construction, or (3) were placed in this area in accordance with an approved landscape plan;

- iv. provide proper grading and drainage on the Lot and Area of Extended Lot Owner Responsibility, in accordance with Article X of this Declaration;
- v. prevent and repair any erosion on the Owner's Lot, Area of Extended Lot Owner Responsibility, any other Lot, or any street in the Community caused by surface run-off from the Owner's Lot, in accordance with Article X of this Declaration; and
- vi. provide at their own expense general maintenance, including but not limited to proper watering, insect and weed control, fertilization, pruning, regular replacement of straws and mulch, proper drainage control, etc. and other types of normal maintenance not provided by the Association, of the overall landscaping and grass for their Lot and Area of Extended Lot Owner Responsibility in compliance with the Regulations established by the Developer, or the Board of Directors, When Empowered.

(c) Any entry by the Association or the Developer or their agents, employees, officers or contractors under the terms of this Section shall not be deemed a trespass, and an easement in gross of a commercial nature is reserved to the Developer and to the Association for the purpose of entry onto any residential Lot or Area of Extended Lot Owner Responsibility for the purpose of enforcing this Section. This provision shall not be construed as an obligation on the part of the Developer or the Association to provide any services. As provided herein, these rights may be assigned by the Developer to the Association, or other appropriate entities. The Owner shall hold harmless the Developer, its agents and employees, officers and contractors and the Board of Directors, and the Architectural Control Authority from any liability incurred arising out of correcting the Owner's breach of this Section.

#### Section 2.15 MAINTENANCE OF WALLS, GATES AND FENCES.

For the purpose of this Section, walls, gates and fences (hereinafter, "Fencing") shall refer only to those walls, gates and fences that are not a part of a Dwelling (though they may be attached to the Dwelling). Though an alternative agreement for the maintenance responsibility for Fencing may be reached between a Lot Owner and an adjoining Lot Owner upon the mutual consent of both parties, each Lot Owner shall remain responsible for maintaining and repairing any Fencing, or portion thereof, constructed for or by such Owner, but not by an adjoining Lot Owner, regardless of whether the Fencing or the portion thereof is located on their Lot or on an adjoining Lot or Common Area. This classification of Fencing may include Fencing that was constructed by the Developer or by a Builder and that is then deemed by the Developer or the Board of Directors, When Empowered, to be the responsibility of that Owner. Fencing of this type that borders the Community shall be deemed "Community Perimeter Fencing" and may be deemed, if so determined by the Developer or the Board of Directors, When Empowered, the responsibility of the Lot Owner. The Association shall not be bound by or obligated to enforce any agreement between adjoining Lot Owners, but may choose, in the absolute discretion of the Developer or the Board of Directors, When

Empowered, to deem an agreement between or among adjoining Lot Owners effective as to the assignment or apportionment of maintenance responsibilities for any Fencing and to enforce such agreement.

With respect to Fencing located on an adjoining Lot or Common Area constructed for or by an Owner in accordance with Section 2.27 (FENCING EASEMENT), the Lot Owner's responsibility shall only apply to the portions of the Fencing on the adjoining Lot or Common Area that are constructed to attach the Fencing of that Lot Owner to the existing Fencing on that adjoining Lot or Common Area. This provision shall in no way limit, however, the responsibility of an Owner to maintain any portion of the Fencing that is deemed to be that Owner's responsibility by the Developer or the Board of Directors, When Empowered.

At the sole discretion of the Developer or the Board of Directors, When Empowered, the Association may, without the consent of the Lot Owner, assume maintenance responsibility for some or all portions of Fencing located on the Lot of that Owner that borders a roadway or that is located near the perimeter of the Community. The Association shall not, however, be obligated to maintain such Fencing, unless so determined by the Developer or the Board of Directors, When Empowered, and then only for such period and to the degree or to a standard determined appropriate by the Developer or the Board of Directors, When Empowered. The standard set by the Developer or the Board of Directors, When Empowered, for the maintained condition of Fencing that is the responsibility of the Association may be different than the standard set by the Developer or the Board of Directors, When Empowered, for Fencing on lots that is to be maintained by Lot Owners, for different types of Fencing or for Fencing located in different portions of the Community.

Though normal maintenance of such fencing should be performed routinely, upon receipt of written notice from the Association that maintenance is required for any Fencing that is deemed to be the responsibility of an Owner by the Developer or the Board of Directors, When Empowered, said Owner shall promptly perform such maintenance within the timeframe allowed in such notice. To protect the integrity and the appearance of any Community Perimeter Fencing, prior to commencing any form of maintenance that will change the appearance of any portion of the Community Perimeter Fencing, an Owner must obtain written approval from the Board of Directors for such maintenance.

#### Section 2.16 LEASES OF LOTS.

Any lease agreement between an Owner and a tenant for the lease of such Owner's Lot or portion thereof, including any portion of the Dwelling or other Improvement on the Lot, shall be subject to and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Articles of Incorporation and Bylaws, and the Regulations, which may include additional conditions or limitations for leases including, but not limited to minimum lease terms. The Owner shall incorporate in any lease of any Lot, Dwelling, or Improvement a provision stating that failure to comply with the terms of such documents and Regulations shall be a default under the terms of the lease. All leases of Lots, Dwellings, or Improvements shall be in writing and a copy of the executed lease, upon written demand, must be provided to the Developer or the Board of Directors, When Empowered.

Section 2.17 STREET LIGHTING CHARGE.

Each Owner shall pay a proportional share of the monthly charge for street lighting service as prescribed by the respective utility company, or pay for such street lighting charge as part of the Regular Assessment as may be determined by the Developer or the Board of Directors, When Empowered. The electric utility company may bill the Owner or the Association for this charge as part of the monthly electric utility bill.

Section 2.18 HAZARDOUS TREES.

A “hazardous tree” is any tree designated as such by the Developer or the Board of Directors, When Empowered, which presents a hazard to person or property due to conditions, including but not limited to, deterioration, death, or physical damage to the root system, trunk, stem or limbs, and the direction and lean of the tree(s). Unless the responsibility for cutting and removal of a hazardous tree is specifically determined or voluntarily assumed by the Board of Directors to be the responsibility of the Association, an Owner of a Lot adjoining a Common Area shall be responsible for cutting and removing hazardous trees within the Common Area that may cause injury to person or property if such hazardous tree were to fall upon the Owner’s Lot. The determination of whether any tree may be cut, whether the tree or any portion of the tree must be removed from the site after cutting, and the location which any debris related to the cutting of the tree may be left or placed within the Common Area shall at all times be that of the Developer, the Board of Directors, When Empowered, or Architectural Control Authority, When Empowered. Notwithstanding the foregoing, prior to taking any steps to cut or remove a tree, an Owner must obtain the written approval of the Architectural Control Authority. Unless some portion of the cost of the cutting or removal of a tree is assumed by the Association, the affected Lot Owner shall bear all costs associated with the cutting and removal of hazardous trees, and such cutting and removal shall at all times be subject to the Regulations as in effect from time to time.

Section 2.19 PONDS.

The pond(s), lakes, wetlands, detention ponds, or other water retention structures (the “Ponds”) are those portions of the Property designated on one or more of the Plats, if any, as Ponds, and shall be kept and maintained as ponds for water retention, drainage, irrigation, and water management purposes in compliance with all governmental requirements. The Ponds may be Common Area, unless otherwise designated by the Developer or the Board of Directors, When Empowered, and may be maintained, administered, and ultimately owned by the Association. Nothing in this Section, however, shall impair or limit the Developer’s or Association’s right to remove the Pond from the Property or Common Area pursuant to the rights retained by it in this Declaration. In furtherance of the foregoing, the Developer hereby reserves and grants an easement in favor of itself and the Association, throughout all portions of the Property as may be necessary for the purpose of accessing, maintaining and administering the Ponds. Neither the Developer nor the Association shall have any obligation to repair, replace or maintain any dam or dams or any other Improvements adjoining the Ponds, unless otherwise required by applicable law.

Water levels in the Ponds may rise and fall significantly or disappear due to, among other things, rainfall and fluctuations in ground water elevations within the surrounding areas. Accordingly, neither the

Developer nor the Association has control over such water levels and/or ground water elevations. Each Owner, by acceptance of a deed to his Lot, hereby releases Developer, the Association, and the Board of Directors, When Empowered, from and against any and all losses, claims, demands, liabilities, damages, costs and expenses of whatever nature or kind (including without limitation, attorneys' fees), related to, and arising out of water levels in the Pond(s). No riparian rights are granted or conveyed hereunder to any Lot adjacent to a Pond or to any Owner, including but not limited to the right to use the water within the Pond. The rights of Owners, if any, to use any Ponds, or the water therein, are derived solely from membership in the Association and are subject to and may be limited by the Regulations.

DEVELOPER AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING BUT NOT LIMITED TO, LIFEGUARDS, FOR THE PONDS, AND ANY INDIVIDUAL USING THE POND(S) SHALL DO SO AT HIS OWN RISK AND HEREBY HOLDS DEVELOPER AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE. EACH OWNER, BY THE ACCEPTANCE OF A DEED TO HIS LOT, ACKNOWLEDGES THAT THE PONDS ARE DEEP AND DANGEROUS. NEITHER THE DEVELOPER, THE ASSOCIATION, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (HEREINAFTER "RELEASED PARTIES") SHALL BE RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY, OR WATER LEVEL OF/IN ANY POND, CREEK, OR STREAM WITHIN THE PROPERTY EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, ANY APPLICABLE GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, NONE OF THE RELEASED PARTIES SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING ON, OR OTHERWISE RELATED TO, THE POND(S); ALL PERSONS USING THE SAME DO SO AT THEIR OWN RISK. ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO THE LOT OR USE OF THE POND(S), TO HAVE AGREED TO RELEASE THE RELEASED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN THE POND(S).

#### Section 2.20 RESTRICTED WETLANDS AREAS.

In addition to any restrictions placed on areas delineated as wetlands by the Army Corps of Engineers or any other applicable governmental authority, the Owners of Lots upon which wetlands are located or to which wetlands are adjacent shall be prohibited from the following:

- Filling, draining, flooding, dredging, impounding, or otherwise changing the grade or elevation, or impairing the flow or circulation of waters, or reducing their reach;
- Cutting, clearing, cultivating, burning or otherwise destroying vegetation in areas shown as wetlands;
- Excavating, erecting, or constructing any facility, releasing wastes, or otherwise doing any work in areas shown as wetlands;
- Introducing or releasing any exotic species of plant or animals into the wetland areas;

- Any other discharge or activity requiring a permit under The Clean Water Act or other water pollution control laws and regulations as may be amended from time to time; or
- Any other act that may be prohibited by any governmental authority.

Where upland buffers have been identified in association with wetlands for the purpose of mitigation in obtaining Clean Water Act permits for the development of the site, the identified buffers carry the same restrictions as delineated wetlands and may not be altered in any way without prior approval of the U. S. Army Corps of Engineers or the North Carolina Department of Environmental Quality.

A Lot Owner may, at its sole cost and expense, with the express prior written approval of the Developer or the Board of Directors, When Empowered, remove or trim vegetation that the Developer or the Board of Directors, When Empowered, deems hazardous to person or property. Upon receipt of written approval to remove or trim any vegetation in a wetlands area or its identified buffer on a Lot or Common Area from the Developer or the Board of Directors, When Empowered, prior to taking any such action, the Lot Owner must then obtain any necessary approvals or permits from the applicable governmental authority having jurisdiction over such matters.

Section 2.21 EASEMENT FOR UTILITIES, ROADS AND COMMON FACILITIES.

The Developer reserves unto itself, the Association, When Empowered, and their Permittees a perpetual, alienable easement and right of ingress and egress, over, upon, across and under each Lot and Area of Extended Lot Owner Responsibility and all Common Area and Areas of Common Responsibility, if any, as are necessary or convenient for the erection, maintenance, installation, and use of electrical systems, cable television systems, irrigation systems, landscaping, telephone wires, cables, conduits, sewers, water mains, and other suitable equipment, other Improvements and buildings necessary or convenient for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities, including but not limited to privately owned television systems and other communications cable and equipment, and the Developer or the Association, When Empowered, may further cut drainways for surface water when such action may appear to the Developer or the Board of Directors, When Empowered, to be necessary in order to maintain reasonable standards of health, safety, and appearance, or to correct deviations from approved development drainage Plans, provided such easements shall not encroach on or cross under (a) existing Dwellings on a Lot, or (b) existing buildings on the Common Area unless Developer agrees to pay for the cost of the relocation or reconstruction of such Common Area building.

The Developer further reserves unto itself and its Permittees a perpetual, alienable easement and right of ingress and egress, over, upon, across and under all Common Area and Areas of Common Responsibility as set out in Article V.

Unless otherwise shown on any of the Plats recorded with respect to the Community, the Developer further reserves an easement on behalf of itself and its Permittees over five feet (5') along each side Lot line of each Lot, and over ten feet (10') along the rear Lot line of each Lot, and over ten feet (10') along the front Lot line of each Lot, and over such other area of each Lot and Area of Extended Lot Owner Responsibility as is shown on any of the Plats recorded with respect to the Community, in each case for the

purpose of construction, installation and maintenance of utilities and drainage and utility and drainage rights of way.

The easements and rights set forth in this Section expressly include the right to cut any trees, bushes, or shrubbery, make any grading of soil, and take any other similar action reasonably necessary to provide economical and safe utility or drainage or other installation and to maintain reasonable standards of health, safety and appearance.

The Developer further reserves unto itself, the Association, When Empowered, and their Permittees a perpetual, alienable easement and right to locate signs, entrances, landscaping, sprinklers and other Improvements related to the Common Area or Area of Common Responsibility or common facilities of the Community including, but not limited to, entrances, wells, pumping stations, and tanks, within residential areas on any walkway or any residential Lot or Area of Extended Lot Owner Responsibility.

The easements and rights set forth in this Section may be exercised by the licensee or designee of the Developer or the Association, When Empowered, but these reservations shall not be considered an obligation of the Developer to provide or maintain any such services.

No Improvements, including, but not limited to, walls, fences, paving or planting shall be erected upon any part of the Property which will interfere with the easements and rights of ingress and egress provided for in this Section, and no Owner shall take any action to prevent the Association, the Developer, or any public or private utility, or any of their agents, contractors or employees from utilizing the easements reserved herein.

THE DEVELOPER, THE ASSOCIATION, THE ARCHITECTURAL CONTROL AUTHORITY, THEIR AGENTS, EMPLOYEES AND OFFICERS SHALL NOT BEAR RESPONSIBILITY FOR THE REPAIR OR REPLACEMENT OF ANY LANDSCAPING PLANTED, SPECIAL GRADING ESTABLISHED, OR IMPROVEMENT CONSTRUCTED WITHIN AN EASEMENT, WHETHER PLANTED, ESTABLISHED OR CONSTRUCTED INTENTIONALLY OR INADVERTENTLY AND WHETHER APPROVED OR NOT BY THE ARCHITECTURAL CONTROL AUTHORITY.

The Developer expressly reserves the right to alter, expand or overburden any easement described in this Section. Such right to alter, expand or overburden shall be limited to such extent as will allow the Owner of the affected Lot and Improvement to convey marketable title. The rights and easements conferred and reserved herein shall be appurtenant to any property now or hereafter owned by Developer, whether or not subject to this Declaration, and shall be easements in gross of a commercial nature for the benefit of the Developer, the Association and their Permittees to serve any property whether or not subject to this Declaration.

Section 2.22 ACCESS EASEMENT BY DEVELOPER OR ASSOCIATION, WHEN EMPOWERED.

For the purpose of performing its function under this or any other Article of this Declaration, the Developer reserves unto itself, the Association, When Empowered, and their Permittees a perpetual,

alienable easement and right of ingress and egress, over, upon, across and under each Lot and Area of Extended Lot Owner Responsibility to (a) correct any violation of this Declaration, the Architectural Guidelines or the Regulations, (b) make necessary examinations in connection therewith, (c) respond to the request or demand of a governmental body, district, agency, or authority exercising jurisdiction over a portion of the Property, and (d) in the sole discretion of the Developer or the Board of Directors, When Empowered, prevent an anticipated request or demand of a governmental body, district, agency, or authority exercising jurisdiction over a portion of the Property. Any entry by the Developer or the Association, When Empowered, or their designees under the terms of this Section shall not be deemed a trespass, and an easement in gross of a commercial nature is reserved to the Developer and to the Association, When Empowered, for the purpose of entry onto any residential Lot or Area of Extended Lot Owner Responsibility for the purpose of enforcing this Section.

Section 2.23 EMERGENCY ACCESS EASEMENT.

The Developer reserves unto itself, the Association, When Empowered, their Permittees and to all police officers, firefighters, ambulance personnel and all similar emergency personnel a perpetual, alienable easement and right of ingress and egress over, upon, across and under the Property, any part thereof, any Lot or Dwelling in the proper performance of their respective duties. Except in the event of emergencies, the rights under this Section shall be exercised only during reasonable daylight hours, and then, whenever practicable, only after advance notice to the Owner affected thereby, which notice may be of a general nature to the Owners of the Developer's and the Association's right of entry hereunder. The rights granted herein to the Developer and the Association include the reasonable right of entry upon any Lot, Area of Extended Lot Owner Responsibility or Dwelling to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Community. Any entry by the Association or the Developer or their designees under the terms of this Section shall not be deemed a trespass, and an easement in gross of a commercial nature is reserved to the Developer and to the Association for the purpose of entry onto any residential Lot, Area of Extended Lot Owner Responsibility or Dwelling for the purpose of enforcing this Section.

Section 2.24 CONSTRUCTION EASEMENT FOR THE DEVELOPER.

The Developer and its duly authorized representative, agents, and employees shall have an alienable right and easement on, over, through, under and across the Property for the purpose of (a) constructing Dwellings or other Improvements on the Lots, (b) making such other Improvements to the Property as Developer, in its sole discretion, desires, (c) installing, replacing, and maintaining all Dwellings and other Improvements within the Community, including utilities servicing the Property or any portion thereof, and (d) doing all things reasonably necessary and proper in connection therewith; provided in no event shall Developer have the obligation to do any of the foregoing.

Section 2.25 FENCING EASEMENT.

There shall be provided to each Lot Owner on each Lot or Common Area that adjoins the Lot of that Owner, an easement for the placement, construction and maintenance of fencing, the size, location and design of which must be approved by the Architectural Control Authority. The easement shall extend into

the adjoining Lot or Common Area along the common property line between the Lot of the Owner and the adjoining Lot or Common Area no more than eighteen inches (18”) or such lesser distance as may be necessary to allow the Lot Owner to connect his fencing to existing fencing on the adjoining Lot or Common Area. Such easement shall only exist when fencing has been placed or constructed on the adjoining Lot or Common Area adjacent to some portion of the property line between the Owner’s Lot and the adjoining Lot or Common Area. Upon receipt of written approval for the size, design and location of the Lot Owner’s fencing from the Architectural Control Authority, the placement or construction of such fencing shall not require the approval or consent of the adjoining Lot Owner or the further consent of the Association. This easement may extend forward or rearward along the property line between the Owner’s Lot and the adjacent Lot or Common Area beyond the location of existing fencing on the adjacent Lot or Common Area, if the location approved by the Architectural Control Authority for the Lot Owner’s fencing requires that such fencing be extended in order to connect the fencing of the Lot Owner with the existing fencing on the adjacent Lot or Common Area. Though agreement may be reached between Lot Owners or between a Lot Owner and the Association to share the cost of the construction or maintenance of fencing between Lots or between a Lot and a Common Area, neither the Association nor an adjoining Lot Owner shall require compensation from a Lot Owner for the use of this easement for the purpose of connecting their fence to an existing fence on a Common Area or on the Lot of an adjoining Lot Owner.

Section 2.26 SPECIAL SERVICES AND EASEMENT FOR THE DEVELOPER AND THE ASSOCIATION TO PROVIDE SPECIAL SERVICES TO ONE OR MORE LOTS.

(a) The Developer or Association may provide the necessary funding to make Special Services available to or to provide such services to Owners of Lots in the Community, which may include the budgeted cost of providing such services, as well as reserves and contingencies, and may make such funding requirement a part of the Regular Assessment, a Specific Purpose Assessment or a Special Services Assessment levied for this purpose. The Developer reserves unto itself and the Association, a perpetual, alienable easement and right of ingress, egress and access, over, upon, across and under each Lot for providing Special Services.

(b) Nothing herein shall require the Developer or the Association to provide any Special Services addressed herein, but the easement shall be for the purpose of providing these elective services if the Developer or the Board of Directors, When Empowered, elects to provide Special Services. If the Developer or the Board of Directors, When Empowered, elects to make Special Services available to a Lot Owner or to provide Special Services to a Lot, then the Lot Owner will be obligated to pay Assessments to pay the cost of Special Services. If (i) a Lot Owner has paid Assessments in an amount deemed by the Developer or the Board, When Empowered, each in its sole discretion, to be sufficient to fund such Special Services for that Owner’s Lot, and (ii) the Owner is otherwise in compliance with the Declaration and the Regulations, then such Lot Owner shall be eligible to receive Special Services (according to the schedule of services arranged by the Developer or Association in the Developer’s or the Board’s, When Empowered, sole determination). Nothing herein shall require the Developer or the Association to provide Special Services for a Lot or to schedule any other services for a Lot other than at the one time or times that Special Services are scheduled for all Lots during the applicable budget year. If any Assessment levied against a Lot shall be delinquent, then the Developer and the Association may, in addition to any other remedy set out in this Declaration, terminate, suspend, increase, decrease or change, in the sole discretion of the

Developer or the Board, When Empowered, without the consent of the Owner or their mortgagees, the Special Services to the Lot. In the event the Developer, or Board of Directors, When Empowered, determines that any or all of the Special Services should not be provided for any Lot or all Lots, the Developer and Association shall be relieved of any obligation to provide any or all Special Services for any or all Lots, as it determines in its sole discretion.

Section 2.27 EASEMENT FOR DRIVEWAYS OVER COMMON AREA.

The Developer reserves unto itself a perpetual and alienable easement and right of ingress and egress, over, upon, across and under all Common Area, if any, as are necessary or convenient for the construction, maintenance, and use of driveways for Dwellings in the Community provided such easement shall not encroach on or cross under existing buildings on the Common Area. This easement and right expressly includes the right to cut any trees, bushes, or shrubbery, make any grading of soil, or to take any other similar action reasonably necessary to provide economical and safe access and to maintain reasonable standards of health, safety, and appearance. Such right may be exercised by the licensee of the Developer, but this reservation shall not be considered an obligation of the Developer or the Association to provide or maintain any such driveway. No Improvements, including, but not limited to, walls, fences, paving, or planting shall be erected upon any part of the Common Area within the Property which will interfere with the rights of ingress and egress provided for in this paragraph and no Owner shall take any action to prevent the Association, the Developer, or any of their agents, contractors or employees from utilizing the easements reserved herein.

Section 2.28 PARKING RIGHTS ON COMMON AREA.

Where there are parking spaces, in addition to those spaces located on the Lots, on any road right of way within the Community or on Common Area, which are for the benefit of some Lots or for all Lots in the Community, unless otherwise determined by the Developer or the Board of Directors, When Empowered, or unless otherwise set forth in the Regulations, as amended from time to time, these parking spaces shall be limited to the use of the guests, invitees, and licensees of the Lot Owners whose Assessments pay for the maintenance of these spaces and are not to be used by the Lot Owners as additional parking spaces for themselves or other residents of the Dwellings in the Community. Violations of use of the parking spaces or of any Regulation addressing the use of such spaces shall be determined in the sole discretion of the Developer or Board of Directors, When Empowered, and the Developer or Board of Directors, When Empowered, may levy Assessments for Non-Compliance against a Lot Owner as they may, in their sole respective discretion, deem appropriate. In addition, the Developer or the Board of Directors, When Empowered, may deprive the offending Lot Owner, their guests, invitees, and licensees of the use of such parking spaces for such period of time as the Developer or Board of Directors, When Empowered, in their sole respective discretion, may deem appropriate and may exercise all other remedies set out in the Declaration in the case of such violation.

Section 2.29 DECORATIVE SIGNAGE.

Where decorative or specialty signage, including street signs, stop signs and other signs of a similar type are installed in the community by the Developer, unless responsibility for the maintenance, repair and

replacement of such signage is assumed by another entity, such as the State, County or an applicable local municipality, the Association shall at all times assume responsibility for maintaining, repairing and replacing such signage in a manner and to the degree as may be deemed reasonably appropriate by the Developer or the Board of Directors, When Empowered.

Section 2.30 BUFFERS.

Portions of the Property may be subject to buffers or other vegetative, landscaping, environmental or wildlife control areas as shown on any of the Plats and/or as established by any governing authority or authorities having jurisdiction over such matters. Such buffers and control areas may limit the improvements permitted to be constructed on any Lot affected thereby. Each Owner, at its sole cost and expense, shall maintain any such area located on Owner's property as a buffer in accordance with the Plats, the Regulations, and any applicable laws, regulations and ordinances of any governing authority or authorities.

Section 2.31 REGULATIONS.

The use of the Property is and shall be subject to the Regulations as in effect from time to time. The Developer and the Board of Directors, When Empowered, may from time to time adopt, amend, change, modify or eliminate any Regulation and may waive any violation of the Regulations, in their sole discretion, without notice to the Owners. Until the termination of Developer's Class "B" Membership, the Developer may, in its sole discretion, veto any modification to the Regulations proposed or implemented by the Association; override any attempt by the Association to enforce or implement the Regulations; and require the Association to enforce and implement any provision of the Regulations. The Regulations may apply to the entire Property, to portions of the Property, or exclusively to specific Neighborhoods or Specific Purpose Areas, if and when designated. Except as otherwise specifically set forth herein, the Regulations may modify the use rights and restrictions set forth in this Declaration and may be more or less restrictive than required by applicable law; provided, however, that each Owner shall at all times be required to comply with applicable law in addition to complying with this Declaration.

Section 2.32 NO ENFORCEMENT OBLIGATION; DELEGATION; WAIVERS AND VARIANCES.

(a) Neither the Developer nor the Association shall have any responsibility to police or enforce any violations of this Declaration or the Regulations and shall have no liability for any violations hereof or for the failure to create, monitor, or enforce any Regulations.

(b) Until the termination of Developer's Class "B" Membership, the Developer may, in its sole discretion, delegate, temporarily or for the period that these rights and authority are reserved to the Developer, any and all rights of Developer set out herein.

(c) Until the termination of Developer's Class "B" Membership, the Developer and, thereafter, the Board of Directors, may, in its sole discretion, waive any violation of this Declaration or the Regulations and grant variances to the covenants and use restrictions set forth herein or therein without the consent of the Members.

## ARTICLE III: THE ASSOCIATION

### Section 3.1 MEMBERSHIP.

It is mandatory that every person or entity who is an Owner of any Lot shall be a Member of the Association. The designation of different classes of membership is for the purpose of establishing the number of votes held by certain Members, and, nothing herein shall be deemed to require voting solely by an individual class on any matter which requires the vote of the Members.

### Section 3.2 MEMBERSHIP CLASSES.

The Association shall have three (3) classes of Membership.

(a) CLASS "A". Class "A" Members shall be all Owners excepting the Developer. Class "A" Members shall be entitled to one (1) vote for each Lot they own. When more than one (1) person holds such interest or interests in any Lot, the entire vote attributable to such Lot shall be exercised by one (1) individual who is duly authorized in writing by all of the Owners of that Lot. In no event shall more than one (1) vote or a partial vote be cast with respect to any such Lot. When more than one person holds such an interest or interests in a Lot, it shall be the responsibility of those Owners to provide the Developer or the Association with written notification, with the signatures of all of those persons owning an interest in the Lot affixed, of the name and mailing address of that person authorized to receive notification from the Association and to cast said vote. Class "A" Membership shall be mandatory for all Owners except the Developer and may not be separated from ownership of any Lot.

(b) CLASS "B". The sole Class "B" Member shall be the Developer. The Class "B" Member shall be entitled to cast the greater of four (4) votes for each Lot for which it holds title or one more vote than the total votes of the Class "A" Members. The Developer's Class "B" Membership shall end and Class "C" Membership shall automatically begin when (i) both (A) one hundred (100%) percent of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale, and (B) Developer no longer owns any of the Property; or (ii) at such time as the Developer voluntarily relinquishes its Class "B" Membership in writing to the Association; in each case subject to the rights of the Developer to reinstate the Class "B" Membership upon reacquiring of any Lot or Common Area or annexation of additional land to the Property as set out in the Declaration. In addition to any and all rights granted to it in this Declaration, the Developer shall enjoy all of the rights granted to the Class "C" Member.

(c) CLASS "C". The sole Class "C" Member shall be the Developer. The Class "C" Member shall have no voting rights and no assessment obligations. The Class "C" Member shall enjoy certain limited rights under this Declaration, the Bylaws, and the Regulations, including without limitation the right to: (i) obtain access to, and electronic and/or paper copies of, Association's books and records, including financial and membership data; (ii) exercise the Developer's enforcement powers pursuant to Section 11.6 of this Declaration, and (iii) call Special Meetings of the Association on any topic or issue it sees fit in its sole discretion, although the Class "C" Member would not be entitled to vote at said meeting. Class "C"

Membership shall continue after the termination of the Class “B” Membership and shall only terminate at the voluntary discretion of the Developer, although there is no requirement that it be terminated.

#### ARTICLE IV: PROPERTY RIGHTS IN THE COMMON AREA

##### Section 4.1 OWNERSHIP OF COMMON AREA.

The Common Area is either owned by the Association or the Developer or both and, as such, is not and will not be owned by the Members of the Association in general or by any individual Member or group of Members. Consistent with its ownership, the use and enjoyment of any portion of Common Area is controlled by either the Developer or by the Board of Directors of the Association, When Empowered. Therefore, no Common Area or any Improvement thereon may be used, modified, changed or altered in any way, without the express written authorization of the Developer, the Board of Directors of the Association or both, as applicable.

##### Section 4.2 ADDITIONAL RIGHTS AND EASEMENTS IN THE COMMON AREA.

In addition to and without limitation of any other rights and easements granted to or reserved by the Developer or the Association in this Declaration, the following rights and easements are hereby granted to and reserved by the Developer, the Association or certain other third parties, as applicable:

(a) (i) The right of the Developer and of the Association, When Empowered, to dedicate, transfer, or convey, without the approval of the Members, all or any part of the Common Area, with or without consideration, to any governmental body, district, agency, or authority, or to any utility company, (ii) the right of the Developer, with or without consideration, to convey all or any part of the Common Area to any third party or to adjust the property lines to cause any part or all of the Common Area to become a part of an adjoining Lot or Lots, to increase or decrease the size of the Common Area, to add or remove Common Area to and from the Property, to annex additional property to the Property and designate all or any portion of such additional property as Common Area, to change the location of the Common Area without the approval of the Members, and (iii) the right of the Association, When Empowered, to convey, with consideration, all or any part of the Common Area to a third party, to adjust the property lines to cause any part or all of the Common Area to become a part of an adjoining Lot or Lots, to increase or decrease the size of the Common Area, to add or remove Common Area to and from the Property, to annex additional property to the Property and designate all or any portion of such additional property as Common Area, and to change the location of the Common Area, upon the affirmative vote of at least a majority of the total votes of the Members cast at a duly called meeting of the Members or pursuant to a recorded resolution, consent or ballot signed by Members holding at least a majority of the total votes of the Members. In connection with any dedication, transfer or conveyance of the Common Area as set forth above, the Developer and the Association, When Empowered, reserve the right to terminate any easement previously granted to the Members in such portion of the Common Area so dedicated, transferred or conveyed.

(b) The right of the Developer at any time, and of the Association, When Empowered, (i) to approve and authorize the construction of new utility structures and facilities or the expansion or modification of existing utility structures and facilities; and (ii) to grant or reserve easements and rights of

way through, under, over, and across Common Area, for the installation, maintenance, and inspection of roads, lines and appurtenances for public and private water, sewer, drainage, and other utility services, including electricity, phones, gas, a cable or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Developer to grant and reserve easements and rights of way through, over and upon and across the Common Area for the operation and maintenance of the Common Area.

(c) The right of the Developer at any time, in accordance with the authority granted to the Developer in Section 6.5 or as an exercise of its reserved rights under this Declaration, to require the Board or any officer of the Association to execute, or upon such Board's or officer's failure to act, for the Developer to execute, such documents on behalf of the Association transferring to the Association (and accepting by the Association the responsibility for) the maintenance of any recreational ponds or all or any portion of the storm drainage system which may include, but not be limited to, retention, detention and water quality ponds, dams, drainage pipes and other like structures.

(d) The right of the Developer at any time, in accordance with the authority granted to the Developer in Section 6.6 or as an exercise of its reserved rights under this Declaration, to require the Board or any officer of the Association to execute, or upon such Board's or Officer's failure to act, for the Developer to execute, such documents on behalf of the Association (i) approving and authorizing the construction of new utility structures and facilities or the expansion or modification of existing utility structures and facilities; (ii) granting or reserving easements and rights of way through, under, over, and across Common Area, for the installation, maintenance, and inspection of roads, lines and appurtenances for public and private water, sewer, drainage, and other utility services, including electricity, phones, gas, a cable or community antenna television system and irrigation or lawn sprinkler systems; or (iii) granting or reserving easements and rights of way through, over and upon and across the Common Area for any other purpose deemed necessary, appropriate or advantageous by the Developer.

(e) The right of the Developer and of the Association, When Empowered, to grant conservation easements through, under, over, and across any portion of the Common Area. The Association shall grant such conservation easements over Common Area as directed by the Developer, regardless of whether or not the Developer still owns any portion of the Property. The Developer hereby reserves the right to enter any portion of the Common Area and perform modifications to it based on conservation or preservation of environmentally sensitive areas, regardless of whether or not the Developer still owns any portion of the Property.

(f) The right of Permittees to ingress and egress in and over those portions of Common Area that lie within any private roadways, parking lots and/or driveways (and over any other necessary portion of the Common Area in the case of landlocked adjacent Owners) to the nearest public roadway.

(g) The right of the Board of Directors, When Empowered, in accordance with applicable law, its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area or reimbursing the Developer for Developer Improvements, and to mortgage or encumber the Common Area in connection with any such borrowing.

(h) The right of the Developer, and of the Board of Directors, When Empowered, to restrict Common Area located within a Specific Purpose Area for the exclusive use and enjoyment of only those Owners who own Lots in the Specific Purpose Area.

(i) The right of parties to any Cost Sharing Agreement to access and use the Common Area as set forth in such Cost Sharing Agreement.

(j) The right of the Developer and of the Board of Directors, When Empowered, in its sole discretion, to grant specific easements for the use of Common Area or to allow for specific or general uses or limitation of use of portions of Common Area. The creation of a specific or general easement for the use of a Common Area, the authorization for all or a specific portion of the Common Area shall in no way affect the use of additional portions of the Common Area nor shall it obligate the Developer or the Board of Directors to make similar allowances for or create similar limitations to or easements on any other Common Area or a portion thereof.

(k) The right of the Developer and the Board of Directors, When Empowered, to cause some portion(s) of the Common Area to be restricted to the use of only those Members who either: (i) reach agreement with the Association for the use of such area, where the Developer or the Board determines that the area or areas cannot reasonably serve all Owners; (ii) purchase the exclusive use rights for, but not fee simple title to, that portion of the Common Area; and/or (iii) pay additional Assessments levied by the Association or fees established by the Developer or the Board, When Empowered, for the use of all or a portion of the Common Area to be used by the Association to offset all or a portion of the Association's estimated cost of the maintenance, repair and replacement of that Common Area or Common Areas.

#### Section 4.3 MEMBER'S EASEMENTS OF ENJOYMENT.

Subject to the rights and easements reserved by or granted to the Developer, the Association or other third parties as set forth in this Declaration, including, without limitation, those rights and easements set forth in Article II of this Declaration, Section 4.2 of this Declaration, Article V of this Declaration, and the right of the Association to suspend the use of the Common Area as set out in Article XI of this Declaration, and subject to the Regulations established and amended from time to time, every Member shall have a right and easement of enjoyment in and to the Common Area, and an easement for pedestrian and vehicular ingress egress and access to and from the Lots over the streets to the public highway. Such easements shall be appurtenant to and shall pass with the title to every Lot.

#### Section 4.4 DELEGATION OF RIGHTS OF ENJOYMENT.

Any Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment to the Common Area and facilities to his Permittees, subject to the limitations set forth above and the Regulations established and amended from time to time. Any Owner shall at all times be responsible for and liable for the actions of that Owner's Permittees and their pets and animals, or anyone else on the Common Area with the permission of said Owner or otherwise on the Common Area due to the actions or lack of action taken by said Owner, and shall further be responsible for payment of any Assessments for Non-Compliance levied for their non-compliance with this Declaration, the Bylaws of the Association or

the Regulations established and amended from time to time, which Assessment shall become a continuing lien on the Lot of such Owner.

Section 4.5 ADDITIONAL IMPROVEMENTS.

(a) Neither the Association nor any Owner shall, without the prior written approval of the Developer, until the termination of the Developer's Class "B" Membership, and thereafter, without the prior written approval of the Board of Directors, construct or modify any Improvement in the Common Area. The Developer reserves the right to construct or modify any additional Improvements in the Common Area without submitting Plans to the Architectural Control Authority and without the approval of the Association, the Members or the Architectural Control Authority. The unauthorized use, alteration, modification or change of Common Area or any portion thereof by an Owner, their Permittees or the pets of either is strictly prohibited. The unauthorized use alteration, modification or change of a Common Area by an Owner, their Permittees or the pets of either shall be deemed a violation of this Declaration. As with other violations of the Declaration, an Owner shall be responsible for the actions or for the failure to act of their Permittees or such pets. Upon written notice from the Developer or the Association, an Owner shall immediately cease any unauthorized use, alteration, modification or change of a Common Area, shall cause its Permittees or pet(s) to cease any unauthorized use, alteration, modification or change of a Common Area and shall bring any portion of the Common Area so modified, altered, changed or improperly used by that Owner, their Permittees or pets to a condition: (i) that is comparable to its condition prior to such unauthorized use, alteration modification, or change; (ii) that is satisfactory to the Developer or the Association, where the resulting condition is less than or different from the original condition of that Common Area prior to its use or modification and/or (iii) that is compliant with the provisions of any statute or requirement issued by any governmental authority having jurisdiction over such matters.

(b) The Developer or the Association shall at all times have at their disposal: (i) all legal remedies under the Law and (ii) all remedies set out in the Declaration to cause the non-compliant Owner, its Permittees or the pets of either to cease any activity that is unauthorized or that, at the sole determination of the Developer or the Board of Directors, When Empowered, falls outside of the limitations set out for the use or modification of a specific Common Area. These remedies shall also be available to cause a non-compliant Owner to bring that improperly used, altered, modified or changed Common Area back to a condition that, in the sole opinion of the Developer or the Board of Directors, When Empowered, complies with the paragraph above. Any cost incurred by the Developer or the Association to remedy a violation of this Declaration or to restore any portion of the Common Area to a condition compliant with the above standards, including collection cost and attorney fees, shall immediately become the cost of the lot Owner or Owners responsible for the violation and a part of the Association's lien on their lot(s) for Assessment for Non-Compliance.

Section 4.6 LIMITATION OF LIABILITY WITH RESPECT TO CONSTRUCTION OF IMPROVEMENTS IN COMMON AREA.

All Owners, by accepting a deed to a Lot, acknowledge and agree that Developer shall have no liability to the Association or any Owner for any defects in design, construction or materials with respect to any improvements constructed on any Common Area.

## ARTICLE V: CERTAIN RIGHTS RESERVED BY DEVELOPER

### Section 5.1 GENERAL.

In addition to any other rights granted or reserved by Developer in this Declaration, this Article V sets forth certain rights granted or reserved by the Developer. To the extent any other provision of this Declaration conflicts or is inconsistent with a provision of this Article V, the provision of this Article V shall control to the extent of the conflict or inconsistency.

### Section 5.2 TITLE TO AND ALTERATION OF COMMON AREA.

(a) The Developer may, but shall not be required to, convey to the Association title to the Common Area, as adjusted by the Developer or the Board of Directors, When Empowered, under the authority granted to the Developer herein.

(b) If Developer conveys title to the Common Area to the Association, such conveyance shall be of fee simple title by limited warranty deed, free and clear of all encumbrances and liens, except those created by or pursuant to this Declaration, or securing obligations of the Association to the Developer, and further except for easements and restrictions existing of record prior to the purchase of the Property by the Developer; provided, however that Developer may retain a right of reverter in the Common Area to the extent set forth in the Common Area deed or deeds.

(c) The Developer, in its sole discretion, shall have the right to alter the Common Area, including, without limitation, (i) to adjust the property lines to cause any part or all of the Common Area to become a part of an adjoining Lot or Lots, (ii) to increase or decrease the size of the Common Area, (iii) to add or remove Common Area to or from the Property, (iv) to annex additional property to the Property and designate all or any portion thereof such additional property as Common Area, (v) to change the location of the Common Area, and (vi) to grant conservation easements through, under, over, and across any portion of the Common Area whether by filing Common Area deeds, easements, additional Common Area deeds or otherwise. The Association and all Owners, by virtue of their acceptance of the deed to their Lot, hereby consent to acceptance of any and all Common Area deeds or conservation easements executed by Developer without the need for Developer to obtain any additional consents or provide any additional notice. Further, at the Developer's request, the Association shall execute and deliver all necessary documents to effectuate proper execution and recording of said Common Area deeds, conservation easements, reversions and other rights reserved in this Declaration or the Common Area deed or deeds and the Association and Lot Owners, by acceptance of the deed to the Common Area, grant to the Developer an irrevocable power of attorney to execute such easements and deeds on behalf of the Association.

(d) At any time after termination of Developer's Class "B" Membership, the Developer may, in its sole discretion, exercise any right of reverter retained by Developer in the deed or deeds to the Common Area conveying such Common Area to the Association. In the event Developer exercises any such right of reverter as set forth in the Common Area deed or deeds, the Developer shall, thereafter, have all rights in and pertaining to such Common Area granted or reserved to Developer in this Declaration,

including, without limitation, the right to alter the Common Area and to grant easements through, under, over and across the Common Area.

(e) An easement in gross of a commercial nature is reserved to the Developer for the purpose of constructing, equipping and reconstructing the Common Area. The Association shall not convey or grant an easement through, under, over or across all or any portion of the Common Area to any third party without obtaining the prior written consent of the Developer, which consent may be granted or withheld in Developer's sole discretion.

Section 5.3 REIMBURSEMENT FOR COST OF DEVELOPER IMPROVEMENTS.

At the request of the Developer, the Association shall promptly reimburse the Developer for the cost incurred or to be incurred by Developer to acquire, construct and equip the Developer Improvements, or such portion thereof as determined by Developer in its sole discretion.

Section 5.4 ROADWAYS AND ACCESSWAYS.

Developer reserves an easement and right to, without the consent of the Association or the Members, (a) establish roadways over the Common Area and such other portions of the Property as Developer determines in its sole discretion are necessary or desirable, and (b) create accessways to additional parcels whether or not encumbered by this Declaration, and whether or not such Common Area or parcels are owned by the Developer; provided that no roadways or accessways created in reliance on this Section 5.4 shall encroach on existing buildings on the Common Area unless the Developer agrees to pay the cost of reconstruction or relocation of such building.

Section 5.5 DEVELOPER'S RIGHTS UPON REACQUISITION OF LOTS AND/OR ANNEXATION OF ADDITIONAL PROPERTY TO THE COMMUNITY.

With the exception of the specific limitations for amendment of the Declaration by the Developer after the termination of the Developer's Class "B" Membership set out herein, at the sole option of the Developer, all or a portion of the rights, privileges and authority granted to the Developer as the Class "B" Member under this Declaration, the Architectural Guidelines, the Regulations and the Bylaws, prior to the termination of the Class "B" Membership, including, without limitation, the authority for architectural controls and the authority to grant variances for violations of the Declaration, the Architectural Control Authority's approval and the Regulations, the option to pay Assessments or the Current Deficit of the Association as set out in Section 5.7, shall be restored to the Developer at any time the Developer either annexes additional property to the Community or re-acquires any Lot within the Community previously owned by the Developer. In accordance with the foregoing sentence, if the Developer exercises its option to recover any of these rights, options or authority, at the sole option of the Developer, the Association shall cease to have such rights or authority to the extent they conflict with the Developer's rights or authority, regardless of whether such rights or authority has been previously assigned or transferred by Developer to the Association. It is the intent of this provision that in the event that the Developer chooses to exercise such rights and or authority, that upon written notice to the Association, the Association shall no longer

have such rights or authority. Subject to the above limitation, unless voluntarily relinquished by the Developer, all such rights and authority granted to the Developer as a Class "B" Member shall be fully restored, for so long as Developer owns any of the Property, including the annexed property or any reacquired Lot in the Community.

Section 5.6 DEVELOPER'S AUTHORITY WITH RESPECT TO MAINTENANCE RESPONSIBILITY OF THE ASSOCIATION AND COST SHARING AGREEMENTS.

Until one hundred percent (100%) of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale, and Developer no longer owns any of the Property, whichever occurs last, or at any time when the Developer has an ownership interest in a portion of the property that is annexed or that has been re-acquired by Developer after transfer of title from the Developer, without the consent of the Board of Directors or any Lot Owner, the Developer shall have the authority to determine: (a) what services shall or shall not be provided by the Association and the costs thereof; (b) what constitutes the Area of Common Responsibility; (c) whether or not the Association shall assume maintenance or replacement responsibility for any portion of the Property or Area of Common Responsibility and the specific level of such responsibility and the cost therefor; (d) whether or not the Association shall enter into one or more Cost Sharing Agreements, the terms of such agreements and the Association's responsibility under such agreements; (e) the Association's maintenance responsibility for improved and unimproved Common Area, as well as any Improvements located thereon; and (f) the Association's maintenance responsibility for all or any portion of the storm drainage system for the Community, including but not limited to, storm drainage lines and ditches, retention, detention, water quality or recreational ponds. In addition, the Developer shall also have the sole authority during these periods (a) where not prohibited by applicable law, to execute on behalf of the Association (or to cause the Board of Directors to execute on behalf of the Association) temporary, long-term or permanent agreements with utility providers and other such parties that cause the Association and Lot Owners within the Property to be provided with the services of such providers and that cause the Association or the Owners of Lots to assume partial or total responsibility for the cost of providing such services (including, but not limited to utilities, street lighting, water and sewer, etc.) or to pay fees required set out in such agreements to assure that these services are made available to the Association or to the Owners of Lots within the community and (b) to determine whether a pond or any other portion of the Common Area (including easements) or any portion of the Area of Common Responsibility shall be maintained by the Association, by a Lot Owner or by an entity (such as an appropriate governing body that agrees to assume such responsibility) without the consent of the Board or any Owner of any Lot, regardless of whether such responsibility is otherwise noted on an approved or recorded plat for the Community.

Section 5.7 PAYMENT OF ASSESSMENTS OR CURRENT DEFICIT BY DEVELOPER.

(a) Unless (i) all of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale, and (ii) Developer no longer owns any of the Property, the Developer may, at any time and at its sole election, pay the Current Deficit instead of paying the Assessments for the Lots it owns, so long as the obligations of the Association within the approved budget are properly met. Should the

Developer annex additional property into the Community or reacquire a Lot previously owned by the Developer, and exercise its option to pay the Current Deficit, the amount due from the Developer shall be limited to only those costs and reserves that relate to any parcel annexed by the Developer or to any Lot or group of Lots annexed or reacquired by the Developer and then with respect to Lots, only for the period that the Lot or Lots are owned by the Developer during any budget year. In addition, in lieu of making any payments of the Current Deficit budgeted to be paid to third parties for services provided to the Association, the Developer may provide such services itself at no additional cost to the Association and thereby reduce or eliminate its Current Deficit obligation.

(b) Any expenses of the Association paid by and any advances paid to the Association by the Developer which exceed the lesser of (i) the amount due from the Developer for Assessments for Lots owned by the Developer, and (ii) the Current Deficit for the period of time in which Developer has elected to pay the Current Deficit, shall be considered a loan to the Association, repayable under terms established by the Developer, and which are reasonably acceptable to the Board of Directors. The Developer will not be obligated to pay any Assessments or the Current Deficit during the time it is a Class "C" Member.

(c) Any Assessments against Lots owned by the Developer (including those Lots added to the Community after the date of the Assessment) shall not be due until the end of the period for which the Assessment is established or such later time as may be determined appropriate by the Board of Directors. If the Developer has elected to pay the Current Deficit, then the Developer shall pay such amounts to the Association within thirty (30) days after the end of the budget year or at such later time as may be determined by the Board of Directors. Such determination to extend the period for payment by the Developer may only be made by the Board of Directors, if the Board of Directors determines that such Assessments or Current Deficit payments are not necessary for the proper operation of the Association during the budget year for which they are due, such payment shall not become due until they become necessary to cover the Current Deficit or the end of the last year that the Developer has the option to pay the Current Deficit, whichever occurs first. If the Developer fails to pay the Current Deficit, if and when due, then the Assessments for Lots owned by the Developer shall be due within thirty (30) days after the Association notifies the Developer of its failure to pay such Assessments or the Current Deficit.

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

Section 5.8 **RIGHT OF DEVELOPER TO DIRECT THE BOARD TO APPLY WORKING CAPITAL TO THE OPERATING EXPENSE AND RESERVES OF THE ASSOCIATION.**

Unless (a) all of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale, and (b) Developer no longer owns any of the Property, the Developer may direct the Board and the Board shall, upon such direction, apply some or all of any funds collected as Assessments for Working Capital to the payment of the Operating Expenses and Reserves of the Association and thereby reduce or eliminate the amount of any Current Deficit that would otherwise result.

Section 5.9 RIGHT OF DEVELOPER TO WAIVE ASSESSMENTS.

Unless (a) all of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale, and (b) Developer no longer owns any of the Property, the Developer in its sole discretion may elect to waive, forgive or otherwise eliminate that Owners obligation to pay Assessments or delay imposition of any type of Assessment on the new Owner, in part or in full; provided that Developer either (1) pays the applicable Assessments attributable to the Lot during this time, or (2) pays the Current Deficit, including the portion of the Current Deficit that is a result of any waiver of the Assessments by Developer. Such waiver of Assessments shall terminate at any time that the Developer fails to comply with the conditions set out in this paragraph and upon such a failure by the Developer to comply with the conditions set out in this paragraph, the Association may at that time provide thirty (30) days' notice to and collect the Assessments from the Owner of the Lot or Lots for which the waiver was granted and the Assessments shall constitute a lien on the Lot or Lots from that date forward.

Section 5.10 RIGHTS SOLELY OF DEVELOPER.

The rights reserved by this Article V are reserved solely to the Developer and shall not pass to the Association unless and until the Developer specifically assigns such right(s) to the Association by a recorded instrument. The rights reserved to Developer in this Article V constitute a material part of the consideration for the Developer to encumber the Property with this Declaration and grant to the Association and the Owners the right to use the Common Area.

Section 5.11 SEVERABILITY OF ARTICLE V.

Without limiting the general applicability or effectiveness of Section 13.4, if any provision of this Article V shall be declared for any reason by a court of competent jurisdiction to be null and void, such judgment or decree shall not in any manner whatsoever effect, modify, change, aberrant, or nullify any of the provisions of this Declaration not so declared to be void but all remaining provisions of this Declaration not so expressly held to be void shall continue unimpaired and in full force and effect.

Section 5.12 BOARD OF DIRECTORS; DEVELOPER'S APPOINTMENT AND REMOVAL POWER.

The affairs of the Association shall at all times be managed by a Board of Directors. When the Developer has its Class "B" Membership, the Developer shall have the authority to appoint the Directors. When the Developer has Class "B" Membership, the Developer may, in its sole and absolute discretion,

authorize the Association to elect Director(s). Any such authorization to appoint or elect Director(s) may be permanent in nature, in which case the election of Directors by the Members of the Association shall occur in accordance with the Bylaws, or may be temporary or authorize the Members to elect Directors in a manner such that the Directors, when elected, are then appointed by the Developer. If the authorization is permanent in nature, such authorization shall be in writing and shall state that the Developer specifically relinquishes its authority to appoint one or more Directors. Otherwise, any authorization shall not be deemed to constitute a waiver of the Developer's right to appoint or remove Director(s). At any time, any Director(s) appointed by the Developer may only be removed from the Board, with or without cause, by the Developer, by giving written notice of removal to the Director and either the remaining members of the Board of Directors or the Association's President or Secretary.

Section 5.13 DEVELOPER LOANS.

If the Developer requests reimbursement for all or any portion of the cost incurred by Developer to acquire, construct and equip the Developer Improvements pursuant to Section 5.3 of this Declaration, the Association may execute a promissory note in favor of the Developer in the amount of the reimbursement obligation (an "Association Note"). The Association Note shall be due and payable on terms acceptable to the Developer in its sole discretion. Any Association Note shall be secured by such mortgages, assignments, pledges and hypothecations of all or a portion of the real and personal property of the Association as Developer may request including, without limitation, Common Area, Assessments, rents, profits and accounts. Notwithstanding anything to the contrary set forth herein, Assessments for Working Capital Fund shall not be used or pledged to repayment of amounts due under any Association Note.

ARTICLE VI: COMPLETION, MAINTENANCE, AND OPERATION OF COMMON AREA AND FACILITIES

Section 6.1 COMPLETION OF COMMON AREA BY THE DEVELOPER.

The Developer will complete the construction of the Common Area, as adjusted from time to time, and the streets and roadways for the Community as shown on the Plats recorded with respect to the Community.

Section 6.2 MAINTENANCE AND OPERATION OF COMMON AREA.

(a) The Association at its sole cost and expense (subject to payment of Assessments by Owners as set forth herein), shall operate, maintain, repair and replace the Common Area and Area of Common Responsibility and provide the requisite services in connection therewith; provided, however, that the Association is under no obligation to operate, maintain, repair or replace those portions of the of Community that are not Common Area or Area of Common Responsibility and the Association, at its sole discretion, may require the owners of such Areas of Common Responsibility to provide their own maintenance rather than the Association. The maintenance, operation, repair and replacement of the areas which are not shown as "Common Area" on any recorded Plats of the Property or so designated as Common Area in any conveyance to the Association by the Developer, to include, but not be limited to, pavements, roadways, streets, walkways, outdoor lighting, buildings, if any, recreational equipment, if any, fences, storm drains,

and sewer and water lines, connections, and appurtenances, and all areas accepted by responsible parties, including the Developer, public bodies, governmental bodies, districts, agencies or authorities, shall not be the responsibility of the Association, unless such areas have been established as Areas of Common Responsibility. This Section shall not be amended to eliminate or substantially impair the obligation of the Association for the maintenance and repair of the Common Area.

(b) If the Association fails to operate, maintain or repair the Common Area to the satisfaction of the Developer or fails to employ contractors which the Developer, in its sole discretion, determines to be able to properly operate or maintain the Common Area, the Developer may, but is not required to, notify the Association to correct the maintenance problem or remove the contractor. If the Association fails to do so within the time set forth in the notice, the Developer may, but is not required to, correct said maintenance problem or remove and replace such contractor. The Association shall reimburse the Developer for any and all costs incurred by the Developer and the cost including collection costs incurred by the Developer shall be a lien on the Common Area. This Section shall not be amended or removed without the written consent of the Developer.

(c) Any entry by the Developer under the terms of this Section shall not be deemed a trespass, and an easement in gross of a commercial nature is reserved to the Developer for the purpose of entry onto the Common Area for the purpose of enforcing this Section. This provision shall not be construed as an obligation on the part of the Developer to provide any services. As provided herein, these rights may be assigned by the Developer. The Association shall hold harmless the Developer, its agents, officers, directors, and employees from any liability arising out of correcting the Association's breach of this Section.

### Section 6.3 WALKING TRAIL MAINTENANCE.

The Developer has the right, but not the obligation, to install walking trails within the Community. In the event walking trails are installed within the Community, the Association shall enjoy the right, but not the obligation, to provide for the maintenance of such walking trails as part of the Association's responsibility for maintenance, in such manner as the Board of Directors, When Empowered, may determine in their sole and absolute option and discretion. The Developer and the Board of Directors, When Empowered, may establish policies setting out how and when these services may be provided. Notwithstanding the foregoing, though the Developer or the Association, When Empowered, may determine whether these services will be provided and the cost and level of such services to be provided, the Developer and the Association shall not in any way be obligated to provide such walking trail maintenance. In the event that a walking trail is installed pursuant to an agreement with or as required by the governmental authority having jurisdiction over the Property, the Developer or Board of Directors, When Empowered, shall have the right, if not contrary to any requirement of the local government authority, to remove the walking trails from the Association's maintenance responsibility. Notwithstanding the foregoing, the Association may elect to reinstate the Association's maintenance responsibility for the walking trails should the Board of Directors determine to reinstate such maintenance or should more than fifty percent (50%) of all of the votes of the Class "A" and Class "B" Members be cast in favor of reinstating the Association's responsibility for maintaining walking trails, such votes being cast in person or by proxy at a meeting duly called for this purpose vote. In all cases, the Developer or Board of Directors, When

Empowered, shall have the authority to determine the level of maintenance required for any walking trails in the Community.

Section 6.4     DEDICATION OF STREETS AND ROADWAYS.

If and when any streets or roadways located within the Community are dedicated to, or otherwise accepted by, responsible parties including without limitation public bodies, governmental bodies, districts, agencies or authorities, the dedication or acceptance shall be subject to the covenants, conditions, restrictions, easements, charges and liens contained in this Declaration, as amended, whether or not it shall be so expressed in any such deed, other conveyance, or plat. The public shall have the right to access or use those streets and roadways located within the Community which are dedicated to, or otherwise accepted by public bodies, governmental bodies, district agencies or authorities, and those sidewalks located within a public road right-of-way to the extent that such access is required by the entity to which the areas are dedicated. The Owner of a Lot may be required to provide some level of maintenance to Improvements within these areas, where such areas are deemed to be a portion of the Area of Extended Lot Owner Responsibility.

Section 6.5     TRANSFER OF MAINTENANCE.

In addition to any other obligations of the Board of Directors and officers of the Association hereunder, upon receipt of a written request from the Developer, the Board of Directors and officers of the Association shall immediately execute any and all documents required by the Developer or the appropriate governing authority or authorities having jurisdiction over such matters or such structures to transfer to the Association (and for the Association to accept the responsibility for) the maintenance of any recreational ponds or all or any portion of the storm drainage system, which may include, but not be limited to, retention, detention and water quality ponds, dams, drainage pipes and other like structures. Such maintenance may include, but not be limited to, the responsibility for water quality, vegetation control and for the structural integrity of the drainage system, banks, dams and any inlet or out-fall systems for ponds. The acceptance of such responsibility shall be the obligation and not the option of the Association, and will not require the approval of the Members. The Board of Directors shall pass such resolutions as are necessary to authorize the appropriate officer to execute all documents requested by the Developer evidencing the acceptance of such responsibility, and the appropriate officer of the Association shall execute all such documents as may be requested by the Developer or by the appropriate governing authority or authorities having jurisdiction over such matters or such structures. In the event that the Board of Directors of the Association or any officer of the Association refuses to execute or fails to execute such documents and to return the same to Developer within ten (10) days of the date that the Developer mailed or delivered said documents to a member of the Board or to the Association's manager (or such longer period as may be provided by party requesting such execution in the notice to the Association), in addition to any other rights reserved to the Developer in this Declaration, Developer, as true and lawful attorney-in-fact for the Association, shall have the authority to execute the documents on behalf of the Association, and such execution by the Developer shall have the same effect and shall bind the Association in the same manner as execution of the Documents by a duly authorized officer of the Association. The Developer's power of attorney for the Association is coupled with an interest and may not be amended or revoked absent Developer's written consent, which consent may be withheld in Developer's sole and absolute discretion. The authority granted herein is

effective as of the date of recording of the Declaration. Nothing contained in this Section 6.5 shall be deemed to create a fiduciary relationship between the Developer and the Association. Developer does not assume, and shall not at any time be deemed to have assumed, any relationship of agency or trust with or for the Association, or any other duty, liability or responsibility to the Association, and no implied duties, liabilities or responsibilities on the part of Developer shall be implied. Nothing contained herein shall be deemed to require Developer to take any action enumerated in this Section 6.5, or impose upon Developer any duty to any Owner, the Association or any other person. The Developer is hereby authorized to take any and all actions (or refrain from taking any or all of said actions) enumerated in this Section 6.5 which Developer, in its sole and absolute discretion, deems appropriate. Any officer of the Association or member of the Board of Directors shall execute any further instrument requested by the Developer to confirm or effect the power of attorney described in this Section 6.5.

Section 6.6 RIGHT TO APPROVE, AUTHORIZE AND EFFECT THE ADDITION AND MODIFICATION OF UTILITY STRUCTURES AND FACILITIES AND THE ESTABLISHMENT OF EASEMENTS AND RIGHTS OF WAY.

In addition to any other obligations of the Board of Directors hereunder, upon receipt of a written request from the Developer at any time, including any time after one hundred (100%) percent of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners, the Board of Directors shall immediately execute any and all documents required by the Developer or, if required by the Developer, requested by a utility service provider or appropriate governing authority or authorities having jurisdiction over such matters or such structures or facilities that may be necessary (a) to approve and authorize the construction, expansion or modification of any utility structures or facilities; (b) to grant and reserve requisite easements and rights of way associated therewith or to allow for such construction, expansion or modification; (c) to cause the Association to assume responsibility for the maintenance, repair and replacement of such easements, rights of way, structures and facilities; or (d) as otherwise determined by the Developer. Such action shall be the obligation and not the option of the Association, and will not require the approval of the Members. The Board of Directors shall pass such resolutions as are necessary to authorize an appropriate officer to execute such documents, and such appropriate officer of the Association shall execute all such documents as may be required by the Developer. In the event that the Board of Directors of the Association or any officer of the Association refuses to execute or fails to execute such documents and to return the same to Developer within ten (10) days of the date that the Developer mailed or delivered said documents to a member of the Board or to the Association's manager (or such longer period as may be provided by party requesting such execution in the notice to the Association), in addition to any other rights reserved to the Developer in this Declaration, Developer, as true and lawful attorney-in-fact for the Association, shall have the authority to execute the documents on behalf of the Association, and such execution by the Developer shall have the same effect and shall bind the Association in the same manner as execution of the Documents by a duly authorized officer of the Association. The Developer's power of attorney for the Association is coupled with an interest and may not be amended or revoked absent Developer's written consent, which consent may be withheld in Developer's sole and absolute discretion. The authority granted herein is effective as of the date of recording of the Declaration. Nothing contained in this Section 6.6 shall be deemed to create a fiduciary relationship between Developer and the Association. Developer does not assume, and shall not at any time be deemed to have assumed, any relationship of agency or trust with or for the Association, or any other

duty, liability or responsibility to the Association, and no implied duties, liabilities or responsibilities on the part of Developer shall be implied. Nothing contained herein shall be deemed to require Developer to take any action enumerated in this Section 6.6, or impose upon Developer any duty to any Owner, the Association or any other person. The Developer is hereby authorized to take any and all actions (or refrain from taking any or all of said actions) enumerated in this Section 6.6 which Developer, in its sole and absolute discretion, deems appropriate. Any officer of the Association or member of the Board of Directors shall execute any further instrument requested by the Developer to confirm or effect the power of attorney described in this Section 6.6.

## ARTICLE VII: ASSESSMENTS

### Section 7.1 ASSESSMENTS.

(a) Each and every Owner of any Lot or Lots within the Property, by acceptance of a deed to a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be personally obligated to pay to the Association the Assessments and the Association's costs of collection, including, without limitation, any collection fees, attorneys' fees, late fees, administrative fees and charges, and court costs incurred in collecting the Assessments, or in enforcing or attempting to enforce the Declaration, Bylaws and Regulations or non-compliance with the Architectural Control Authority's approval (collectively, "Costs of Collection"). The Association shall only be obligated to provide a copy of the budget or notice of Assessments levied by it to the Owners listed in its records. As set out in Section 13.2 of the Declaration, every Owner shall be required to provide the Association with written notice of the name and address for delivery of any notice from the Association, including notices of Assessments levied against their Lot. Failure of an Owner to receive such notice from the Association shall not in any way limit or eliminate the Owner's obligation to pay an Assessment or to pay an Assessment by the due date set for payment of such Assessment.

(b) Assessments, together with interest thereon, and other Costs of Collection shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which such Assessments are levied. Owners of any Lot shall share in the obligation of any other Owner of that Lot and shall be jointly and severally liable for any Assessments and the Costs of Collection that are attributable to that Lot. In the event an Owner holds title to multiple Lots in the Community, including without limitation builders, the Association's continuing lien shall be treated as one all-encompassing lien over all the Lots of that Owner for purposes of the remedies set forth in Article XI of this Declaration.

(c) The Association shall, upon demand at any time, furnish to any Owner or attorney representing the prospective purchaser of a Lot, a certificate in writing signed by an officer of the Association, setting forth whether said Assessments have been paid. Such certificate shall be conclusive evidence of payment of any Assessments therein stated to have been paid. At all times the Association's records with respect to payments made or due shall be deemed correct unless proper documentation to the contrary can be produced.

(d) This Article shall not be amended to eliminate or substantially impair the obligation to fix the Assessments at an amount sufficient to properly operate the Association, maintain and operate the

Common Area and perform the maintenance required to be performed by the Association under this Declaration without the written consent of the Developer.

(e) There shall be seven types of Assessments: (1) Regular Assessments as described in Section 7.2 below; (2) Assessments for Non-Compliance with this Declaration, the Bylaws of the Association, and the Regulations established and amended from time to time as described in Section 7.3 below; (3) Assessments for Capital Improvements as described in Section 7.4 below; (4) Assessments for Working Capital Fund as described in Section 7.5 below; (5) Assessments for Budgetary Shortfall as described in Section 7.6 below; (6) Specific Purpose Assessments, if and when Specific Purpose Areas are designated, as described in Section 7.7 below; and (7) Special Services Assessments, as described in Section 7.8 below. Such Assessments to be fixed, established, and collected from time to time as herein after provided.

Section 7.2 REGULAR ASSESSMENTS.

(a) The Regular Assessments levied by the Association shall be used exclusively for the purposes of (1) the general operation of the Association, reserves and the promotion of the health, safety, and welfare of the residents of the Community, and in particular for the improvement and maintenance of the Common Area and Areas of Common Responsibility, including but not limited to, the payment of any notes, mortgages, taxes and insurance thereon, including any Association Note, and repair, replacement, and additions thereof, the cost of labor, equipment, materials, management, Treasurer fees, and supervision thereof, and the cost of lawn and landscaping maintenance, and refuse collection; reserves for the replacement of the Association property and improvements to the Common Area; (2) paying all other obligations or debts incurred by the Association; and (3) if the Board so determines, for making available or providing Special Services to all of the Lots.

(b) The Developer or the Board of Directors, When Empowered, shall at all times fix the Regular Assessment based on the Association's budget for the period of the Regular Assessment. The budget may be, but is not required to be, based on the number of Lots projected to be in the Community under the Master Plan (the "Build-Out") and the cost projected to be incurred by the Association at Build-Out. The amount of the Regular Assessment shall be uniform for each Lot except as set forth herein and shall be assessed against all Lots at the time of the Assessment. The Developer or Board of Directors, When Empowered, shall once each year create a budget and fix the date of commencement, the size and number of installments, the method of determining the amount of all Regular Assessments against each Owner of a Lot, and shall, at that time, prepare a roster of the Owners and the Assessments applicable thereto. The roster shall be kept in the office of the Association and shall be opened to inspection by any Owner. If the Developer or the Board of Directors, When Empowered, fails to set a Regular Assessment, then the previous Assessment or the previous installment schedule shall continue until the Regular Assessment is set. Subject to the provisions of Section 7.1(a), a copy of the budget or any amended budget and written notice of the Regular Assessment and adjustment thereof, shall be sent to every Owner subject thereto, identifying the amount(s), due date(s), and the address to which payments are to be sent, at least thirty (30) days in advance of the due date of the first (or only) installment of each Regular Assessment. When Developer has Class "B" Membership, the Developer shall have the option of approval of any portion of the budget.

(c) The Developer or the Board of Directors, When Empowered, shall have the right to adjust the amount and installment schedule of the Regular Assessment without Membership approval for the purpose of meeting the budgetary obligations of the Association and in times of an unexpected cash flow shortfall. In the event of an unbudgeted cash surplus, the Developer or the Board of Directors, When Empowered, shall have the authority to apply some or all of the surplus toward its capital improvement fund or capital reserve fund. The Developer or the Board of Directors, When Empowered, may, at its sole discretion, set estimated Regular Assessments until the Regular Assessment is set and the budget completed, or may delay the billing of Regular Assessments until the budget is complete and then bill the Owners for the Regular Assessment for the entire budget period.

(d) At the time of the closing of a Lot owned by the Developer, if the Regular Assessment for that period has been paid by the Developer, that portion of the Regular Assessment that is attributable to the balance of the period shall be collected and paid to the Developer by the purchaser of the Lot. Any sums not reimbursed to the Developer, shall also be a lien on the Lot. All other Assessments, when levied, shall be the responsibility of the Owner of record on the date that the Assessment is authorized by the Developer or by the Board of Directors, When Empowered.

(e) An Owner shall be not be exempt from paying the Regular Assessments, Specific Purpose Assessments, Special Services Assessments, or other Assessments as defined in Section 7.1, and the amount of the Regular Assessments, Specific Purpose Assessments, Special Services Assessments or other Assessments shall not be reduced because any Owner refuses to accept, provides or arranges for others to provide all or some of the Special Services, other than as specifically provided in this Declaration.

Section 7.3 ASSESSMENTS FOR NON-COMPLIANCE.

In the event that any Owner or their Permittees fail to comply with any of the provisions of the Declaration, the Bylaws of the Association Architectural Control Authority's approval and Regulations established and amended by the Developer or the Board of Directors, When Empowered, from time to time, relating to any portion of the Community, including without limitation violations occurring on Lots, Areas of Extended Lot Owner Responsibility, Common Area, and streets; or fail to pay when due the sums due to utility providers for services pursuant to an agreements authorized by Section 5.5 of the Declaration; or fail to comply with the Architectural Control Authority approvals, Developer and the Board of Directors, When Empowered, may issue Assessments against the responsible Lot Owner(s) in amounts as it determines in its sole discretion, which shall be an Assessment for Non-Compliance and which are a lien on the Lot or Lots of that Owner(s). The Developer shall retain the power to levy Assessments for Non-Compliance even after the Association becomes entitled to exercise such power, including after termination of the Developer's Class "B" Membership. Therefore, the rights of the Developer and of the Association under this Section are not mutually exclusive.

Section 7.4 ASSESSMENTS FOR CAPITAL REPAIR OR IMPROVEMENTS.

In addition to the Regular Assessments, the Association may levy, in any period, an Assessment (which must be fixed at a uniform rate for all Lots) for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement upon

the Common Area or Area of Common Responsibility, including the necessary fixtures, equipment and personal property relating thereto, or to provide for the payment of any Association Note; provided that (a) in the event that such Assessment is to be levied to provide for payment of any Association Note, such Assessment must be approved by the Board of Directors, and (b) otherwise, that such Assessment shall have the assent of at least a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting; provided, further, the aforementioned periods for notice may be shorter as necessary to obtain funds for emergency repairs to the Improvements on the Common Area. Subject to the provisions of Sections 7.1(a) and 7.2, the due date or due dates of any installment of any such Assessment shall be fixed in the assent of the Members authorizing such Assessment.

#### Section 7.5 ASSESSMENTS FOR WORKING CAPITAL.

At the time of acquiring title to a Lot from the Developer, at the sole option of Developer, or from a contractor who purchased the Lot from the Developer and completed or installed the Dwelling and Improvements on the Lot, and upon any subsequent transfer of title, at the option of the Developer or the Board of Directors, When Empowered, the Owner acquiring title to the Lot shall deposit with the Association a payment in the amount of Two Thousand and No/100 (\$2,000.00) Dollars or in such amount which may be determined from to time by the Developer or Board of Directors, When Empowered, to be used for such purposes as permitted by this Declaration and applicable law (including, without limitation, the design, construction, replacement, maintenance and repair of Common Area Improvements, and payment of other expenses or reserves of the Association).

#### Section 7.6 ASSESSMENTS FOR BUDGETARY SHORTFALL.

In addition to the Regular Assessment, the Developer or the Board of Directors, When Empowered, may, at its option, draw from the appropriate reserve funding or working capital funds or may levy, in any period, an Assessment (which must be fixed at a uniform rate for all Lots), applicable to that period only, to cover any unexpected shortfall in the cash flow of the Association. The Developer or the Board of Directors, When Empowered, may determine, in its sole discretion, whether or not the Association shall be required to replace such reserve funding or working capital funds used by the Association in the manner set forth in this Section.

#### Section 7.7 SPECIFIC PURPOSE ASSESSMENTS.

(a) In addition to the Regular Assessment charged each Owner of a Lot, should Special Services be provided by the Association for Owners of Lots in a Specific Purpose Area within the Community, if and when designated, the Developer or the Board of Directors, When Empowered, shall have the authority to levy an Assessment applicable only to such Lots in the Specific Purpose Area being offered or provided such Special Services ("Specific Purpose Assessment"), based upon a budget approved by the Developer or the Board of Directors, When Empowered, to fund these Special Services and the Association's cost of implementing and administering these Special Services, as well as to fund reserves and contingencies needed to assure that these Special Services can be provided. Provided, however, until

the termination of Developer's Class "B" Membership, the Developer shall have the authority to determine and to approve or disapprove any increase or decrease to the Special Services to be provided to any Specific Purpose Area and the appropriate increase or decrease to the Specific Purpose Assessment for those services. Subject to the Developer's rights, the Board of Directors, When Empowered, may increase or decrease the Special Services to be provided to a Specific Purpose Area and increase or decrease the Specific Purpose Assessment for these Special Services; provided, however, the Members of the Specific Purpose Area may repeal such action of the Board of Directors by vote of at least a majority of the Members subjected to the Specific Purpose Assessment. Notwithstanding their responsibility when asked by the Board of Directors to create a budget for approval by the Board of Directors to include the cost of existing Special Services being provided to a Specific Purpose Area and subject to the Developer's rights, the Specific Purpose Committee, with the affirmative vote of at least 2/3 of the Members in the Specific Purpose Area, may increase or decrease the Special Services to be provided to a Specific Purpose Area and increase or decrease the Specific Purpose Assessment as it deems appropriate.

(b) If and when a Specific Purpose Area is designated, the Developer or the Board of Directors, When Empowered, shall at all times fix the Specific Purpose Assessment based on the budget prepared by the Board of Directors or its designee in accordance with the Bylaws for the period of the Specific Purpose Assessment. The Board of Directors, When Empowered, may at its sole option, appoint or cause to be elected by the Members subject to the Specific Purpose Assessment, a Specific Purpose Committee created for the purpose of being its designee with respect to the creation of a Specific Purpose Area budget and for other purposes that the Board of Directors may determine, including the management and administration of the Special Services to be provided for the Members subject to the Specific Purpose Assessment. Should a Specific Purpose Committee, after being directed to manage and administer these Special Services by the Board of Directors, refuse to accept any portion of the responsibility required of them by the Board of Directors or fail to perform the duties set out by the Board of Directors, the Board of Directors shall at its option, continue or discontinue these Special Services, and adjust the Specific Purpose Assessment as the Board of Directors deems appropriate. The amount of the Specific Purpose Assessment that is approved by the Board of Directors shall be uniform for each Lot in the Specific Purpose Area, except as set forth herein, and shall be assessed against all Lots in the Specific Purpose Area at the time of Assessment; provided, however, that the Developer or the Board of Directors, When Empowered, may vary the amount of the Specific Purpose Assessment amongst Lots within a Specific Purpose Area based on the benefit(s) provided to, or received by, some but not all Lots in the Specific Purpose Area. The Board of Directors or its designee shall, in accordance with the Bylaws, once each year create a budget, fix the date of commencement, the size and number of installments, the method of determining the amount of all Specific Purpose Assessments against each Owner of a Lot, and shall, at that time, prepare a roster of the Owners and the Specific Purpose Assessments applicable thereto, all of which shall be submitted to the Board of Directors for approval as required by the Bylaws. The roster shall be kept in the office of the Association and shall be opened to inspection by any Owner. Subject to the provisions of Section 7.1(a), a copy of the budget, or any amended budget and written notice of the Specific Purpose Assessment and adjustment thereof, shall be sent to every Owner subject thereto, identifying the amount(s), due date(s), and the address to which payments are to be sent, at least thirty (30) days in advance of the due date of the first (or only) installment of each Specific Purpose Assessment. Until the termination of Developer's Class "B" Membership, the Developer shall have the option of approval of any portion of a budget or the amount of a Specific Purpose Assessment.

(c) If and when a Specific Purpose Area is designated, the Developer or the Board of Directors, When Empowered, shall have the right to adjust the amount and installment schedule of the Specific Purpose Assessment without Membership approval for the purpose of meeting the budgetary obligations of the Specific Purpose Area and in times of an unexpected cash flow shortfall. The Developer or the Board of Directors, When Empowered, may, at its sole discretion, set estimated Specific Purpose Assessments until the Specific Purpose Assessment is set and the budget completed, or may delay the billing of Specific Purpose Assessments until the budget is complete and then bill the Owners for the Specific Purpose Assessment for the entire budget period. Despite the payment of such Specific Purpose Assessment, the Developer or Board, When Empowered, may terminate, change, suspend, increase, or decrease, in the sole discretion of the Developer or the Board, When Empowered and without the consent of the Owner or their mortgagees, any Special Services made available to a Lot Owner by the Association, at any time, including, but not limited to, upon the failure of an Owner to remain compliant with the provisions of the Declaration, the Bylaws, the Regulations or Architectural Control Authority's approvals.

(d) At the time of the closing of a Lot owned by the Developer, if the Specific Purpose Assessment for that period has been paid by the Developer, that portion of the Specific Purpose Assessment that is attributable to the balance of the period shall be collected and paid to the Developer by the purchaser of the Lot. Any sums not reimbursed to the Developer shall also be a lien on the Lot. All other Assessments, when levied, shall be the responsibility of the Owner of record on the date that the Assessment is authorized by the Developer or by the Board of Directors, When Empowered.

(e) If a Neighborhood and a Specific Purpose Area have been designated for the exact same portion of the Community, the Specific Purpose Assessment may be referred to as a "Neighborhood Assessment."

#### Section 7.8 SPECIAL SERVICES ASSESSMENTS.

(a) A Special Services Assessment may be levied against all Lots in the Community or against some, but not all, Lots in the Community which may or may not be in a Specific Purpose Area. In addition to the Regular Assessment charged each Owner of a Lot, should Special Services be provided by the Association or Developer for Owners of Lots within the Community, the Developer or the Board of Directors, When Empowered, shall have the authority to levy an Assessment applicable only to such Lots offered or being provided such Special Services ("Special Services Assessment"), based upon a budget approved by the Developer or the Board of Directors, When Empowered, to fund these Special Services and the Association's or Developer's cost of implementing and administering these Special Services, as well as to fund reserves and contingencies needed to assure that these Special Services can be provided. Provided, however, until the termination of Developer's Class "B" Membership, the Developer shall have the authority to determine and to approve or disapprove the Special Services to be provided and the appropriate Special Services Assessment to provide for such Special Services to Lots in the Community. After the termination of the Developer's Class "B" Membership or at an earlier date determined solely by the Developer, such authority shall be transferred to the Board of Directors.

(b) The amount of the Special Services Assessment that is approved for each Lot or type of Lot by the Developer or the Board of Directors, When Empowered, may vary based upon the Developer's

or the Board's determination of the benefit(s) made available to, provided to or received by a Lot. The Board of Directors or its designee shall, in accordance with the Bylaws, once each year create a budget, fix the date of commencement, the size and number of installments, the method of determining the amount of all Special Services Assessments against each Owner of a Lot, and shall, at that time, prepare a roster of the Owners and the Special Services Assessments applicable thereto. The roster shall be kept in the office of the Association and shall be opened to inspection by any Owner. Subject to the provisions of Section 7.1(a), a copy of the budget, or any amended budget and written notice of the Special Services Assessment and adjustment thereof, shall be sent to every Owner subject thereto, identifying the amount(s), due date(s), and the address to which payments are to be sent, at least thirty (30) days in advance of the due date of the first (or only) installment of each Special Services Assessment. Until the termination of Developer's Class "B" Membership, the Developer shall have the option of approval of any portion of a budget or the amount of a Special Services Assessment.

(c) If and when a Special Services Assessment is levied, the Developer or the Board of Directors, When Empowered, shall have the right to adjust the amount and installment schedule of the Special Services Assessment without Membership approval for the purpose of meeting the budgetary obligations required in providing Special Services and in times of an unexpected cash flow shortfall. The Developer or the Board of Directors, When Empowered, may, at its sole discretion, set estimated Special Services Assessments until the Special Services Assessment is set and the budget completed, or may delay the billing of Special Services Assessments until the budget is complete and then bill the Owners for the entire budget period. Despite the payment of such Special Services Assessment, the Board may limit or terminate any Special Services made available to a Lot Owner by the Association upon the failure of an Owner to remain compliant with the provisions of the Declaration, the Bylaws, the Regulations or Architectural Control Authority's approvals.

(d) At the time of the closing of a Lot owned by the Developer, if the Special Services Assessment for that period has been paid by the Developer, that portion of the Special Services Assessment that is attributable to the balance of the period shall be collected and paid to the Developer by the purchaser of the Lot. Any sums not reimbursed to the Developer shall also be a lien on the Lot. All other Assessments, when levied, shall be the responsibility of the Owner of record on the date that the Assessment is authorized by the Developer or by the Board of Directors, When Empowered.

#### Section 7.9 SUBORDINATION OF THE LIEN TO FIRST LIEN MORTGAGES.

The liens or claims against a Lot or Dwelling for unpaid Assessments or charges levied by the Developer or the Association, When Empowered, pursuant to this Declaration shall be subordinate to (a) assessments, liens and charges for taxes past due and unpaid on the Lot or Dwelling; and (b) the lien of any First Lien Mortgagee recorded with the Register of Deeds prior to the recording of a notice of delinquency by the Developer or the Association. Sale or transfer of any Lot or Dwelling shall not affect the liens of the Developer or Association for unpaid Assessments provide for in the preceding sentence. A First Lien Mortgagee who obtains title to a Lot or Dwelling pursuant to foreclosure of its lien or by accepting a deed in lieu of foreclosure shall not be liable for such Lot's or Dwelling's unpaid Assessments that accrue after the date of recording of the first lien mortgage or deed of trust and prior to the acquisition of title to such Lot or Dwelling by the First Lien Mortgagee, and shall take the same free of such lien or claim for unpaid

Assessments or charges (except for claims for a pro rata share of such prior Assessments or charges resulting from a pro rata reallocation thereof to all Lots or Dwellings, including the Lot or Dwelling in which the mortgagee is interested). No sale or transfer of a Lot or Dwelling shall relieve an Owner from liability for any Assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any subsequent First Lien Mortgagee, except for liens for Assessment due from subsequent Owners of the Lot if a notice of delinquency is recorded prior to the subsequent first lien mortgage or deed of trust.

Section 7.10 EXEMPT PROPERTY.

The following properties subject to this Declaration shall be exempt from the dues, Assessments, charges, and liens created herein: (a) all Common Area and (b) streets and road rights-of-way. Notwithstanding any provision herein, no Lots shall be exempt from said liens.

Section 7.11 OTHER ASSESSMENTS.

Until the termination of Developer's Class "B" Membership or upon annexations of additional property or reacquisition of Lots in the Community, the Developer shall also have the right, but not the obligation, to establish Assessments for parcels, other than Lots, within the Property and/or for the Dwellings on such parcels, as it determines from time to time in its sole discretion. Such Assessments shall be a lien on such parcels and/or Dwellings and shall be enforceable in the same manner as set out herein for other Assessments.

ARTICLE VIII: ARCHITECTURAL CONTROL

Section 8.1 ARCHITECTURAL CONTROL AUTHORITIES.

The Developer shall be the initial Architectural Control Authority. The Developer and the Board of Directors, When Empowered, may elect to delegate all or some portion of its authority or responsibilities as the Architectural Control Authority to one or more architectural control committees. The architectural control committees, if and when established, shall be composed of representatives in such numbers and with such qualifications as may be determined by the Developer or the Board of Directors, When Empowered. Each Neighborhood, if and when designated, may have its own Architectural Control Authority established by the Developer or the Board of Directors, When Empowered. The representatives of each Neighborhood Architectural Control Authority need not own Lots in the same Neighborhood as the Neighborhood Architectural Control Authority they are serving on.

Section 8.2 PROCEDURES.

- (a) Any Lot Owner desiring to construct, repair, maintain, place, replace or reconstruct any Improvement on any Lot, Area of Extended Lot Owner Responsibility or Common Area or to make any improvements, alteration or changes to any Improvement, in addition to obtaining any and all applicable property owner or governmental approvals, shall submit Plans and any other documentation required by the Architectural Control Authority to the Architectural Control

Authority, which shall evaluate, approve, disapprove or refuse to approve in writing such Plans in light of the purpose of the Declaration. The Architectural Control Authority shall have complete discretion to approve or disapprove Plans for any Improvement and to withhold review of any and all Plans submitted to it from an Owner who is not in good standing as a Member of the Association, including without limitation Members who owe past due Assessments on any Lot in the Community. The Architectural Control Authority may issue from time to time Architectural Guidelines to assist it in the approving of Improvements and may change such Architectural Guidelines at any time and from time to time without notice to the Owners. An aggrieved Owner may appeal the final decision of the Architectural Control Authority to the Developer or the Board of Directors, When Empowered, through the processes required by the Architectural Control Authority or as may be set forth in the Architectural Guidelines or the Regulations. The failure to publish Architectural Guidelines shall not in any manner adversely affect the architectural review authority of the Developer, the Board of Directors, When Empowered, or the Architectural Control Authority, When Empowered as set forth in this Declaration, including without limitation the authority to approve any and all Improvements on any and all Lots, Areas of Extended Lot Owner Responsibility or Common Area.

- (b) The Developer or Board of Directors, When Empowered, may charge a reasonable review fee for its initial and any subsequent review, the amount of which shall be established by the Developer or Board of Directors, When Empowered, or as may be set forth in the Architectural Guidelines. The Developer or Board of Directors, When Empowered, may, at its option, employ outside professional services for the review of Plans and specifications and may pay them accordingly for this service. The charging of fees and the hiring of professionals for this purpose must be approved by the Developer or the Board of Directors, When Empowered.
  
- (c) APPROVAL BY THE DEVELOPER, BOARD OF DIRECTORS, WHEN EMPOWERED, OR THE ARCHITECTURAL CONTROL, WHEN EMPOWERED, AUTHORITY OF ANY PLANS AND SPECIFICATIONS OR THE GRANTING OF A VARIANCE WITH RESPECT TO ANY OF THE ARCHITECTURAL GUIDELINES AND REGULATIONS, WHEN ESTABLISHED, SHALL NOT IN ANY WAY BE CONSTRUED TO SET A PRECEDENT FOR APPROVAL, ALTER IN ANY WAY THE PUBLISHED ARCHITECTURAL GUIDELINES, WHEN ESTABLISHED, OR BE DEEMED A WAIVER OF THE DEVELOPER'S OR OF THE ARCHITECTURAL CONTROL AUTHORITY'S RIGHT IN ITS DISCRETION, TO DISAPPROVE SIMILAR PLANS AND SPECIFICATIONS, USE OF ANY IMPROVEMENT OR ANY OF THE FEATURES OR ELEMENTS WHICH ARE SUBSEQUENTLY SUBMITTED FOR USE IN CONNECTION WITH ANY OTHER LOT. Except for the right of the Developer or Board of Directors, When Empowered to approve or disapprove the Plans on appeal, approval of the Plans relating to any Lot or Area of Extended Lot Owner Responsibility shall be final as to that Lot or Area of Extended Lot Owner Responsibility and such approval may not be reviewed or rescinded thereafter by the Architectural Control Authority, provided that there has been adherence to, and compliance with the Plans as approved in writing, and any conditions attached to any such approval and the Regulations.

- (d) The Developer or Board of Directors of the Association, When Empowered, may, at its option, require the Owner to make a deposit to ensure compliance with the approval or the Regulations in an amount and upon conditions to be determined by the Architectural Control Authority. The setting of an amount as a compliance deposit or of conditions for compliance for any one Lot shall not in any way act to set a precedent or effect in any way the setting of an amount or conditions of compliance for any other Lot or for any other set of Plans which are to be or have been approved by the Architectural Control Authority. Nothing herein shall be deemed to waive or limit in any way any other remedies of the Developer, including those to ensure compliance with the Architectural Control Authority's approvals and Regulations under this Declaration or at law. If collected, the compliance deposit may be retained or utilized by the Association in any manner that the Developer or Board of Directors, When Empowered, may determine to be reasonable, including the payment of attorneys' fees, to ensure that any violation of the Declaration or the Architectural Control Authority's approval is remedied, including the failure of the Lot Owner to pay Assessments levied by the Association against their Lot.
- (e) THE DEVELOPER, AND THE ASSOCIATION, THEIR AGENTS, EMPLOYEES, DIRECTORS, OFFICERS, MEMBERS, SHAREHOLDERS AND ANY MEMBERS OF AN ARCHITECTURAL CONTROL AUTHORITY, SHALL NOT BE RESPONSIBLE OR LIABLE IN ANY WAY FOR THE DEFECTS, STRUCTURAL OR OTHERWISE, IN ANY PLANS OR SPECIFICATIONS APPROVED BY THE DEVELOPER, THE BOARD OF DIRECTORS, OR THE ARCHITECTURAL CONTROL AUTHORITY OR FOR ANY DEFECTS IN ANY WORK DONE ACCORDING TO THE PLANS AND SPECIFICATIONS APPROVED BY THE DEVELOPER, THE BOARD OF DIRECTORS, OR ARCHITECTURAL CONTROL AUTHORITY. FURTHER, THE DEVELOPER, THE ASSOCIATION, ARCHITECTURAL CONTROL AUTHORITY, OR THEIR RESPECTIVE MEMBERS SHAREHOLDERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR ATTORNEYS SHALL NOT BE LIABLE TO ANYONE BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, MISFEASANCE, MALFEASANCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS OR THE EXERCISE OF ANY OTHER POWER OR RIGHT OF THE DEVELOPER, THE BOARD OF DIRECTORS, OR THE ARCHITECTURAL CONTROL AUTHORITY PROVIDED FOR IN THIS DECLARATION. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS TO THE DEVELOPER, THE BOARD OF DIRECTORS, OR THE ARCHITECTURAL CONTROL AUTHORITY FOR APPROVAL AGREES, BY SUBMISSION OF SUCH PLAN AND SPECIFICATIONS, AND EVERY OWNER OF ANY LOT AGREES, THAT HE WILL NOT BRING ANY ACTION OR SUIT AGAINST THE DEVELOPER, THE ASSOCIATION, THE MEMBERS OF ITS BOARD OF DIRECTORS, OR THEIR MEMBERS, SHAREHOLDERS, DIRECTORS, AGENTS, EMPLOYEES AND OFFICERS, OR ANY MEMBER OR AGENTS OF THE ARCHITECTURAL CONTROL AUTHORITY, TO RECOVER ANY DAMAGES ARISING OUT OF SUCH APPROVAL OR DISAPPROVAL, AND, EACH OWNER BY ACCEPTANCE OF THE DEED TO THE LOT, RELEASES, REMISES, QUIT CLAIMS, AND COVENANTS NOT TO SUE FOR, ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH SUCH APPROVAL OR DISAPPROVAL,

NOTWITHSTANDING, ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

Section 8.3 COMMENCEMENT AND COMPLETION OF THE CONSTRUCTION, PLACEMENT OR MODIFICATION OF AN IMPROVEMENT BY AN OWNER.

Until one hundred percent (100%) of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for the purposes of development and sale, the Developer or the Board of Directors, When Empowered, shall have the authority to determine what period of time should be allowed for the commencement and completion of the construction, placement or modification of any Improvement on a Lot, specifically including a Dwelling. Such timeframe for commencement and for the completion of such construction, placement or modification of the Improvement shall be provided to said Owner in the written notice of approval for such Improvement required by the Declaration to be obtained by said Owner prior to the commencement of the construction, placement or modification of an Improvement, including the clearing or preparation of any portion of the Lot or the delivery of materials. The failure of the Developer or the Board of Directors, When Empowered, to include these deadlines in such approval notice shall not limit in any way the authority of the Developer or the Board of Directors, When Empowered, to thereafter determine such time frame or to enforce this provision of the Declaration, nor shall such failure preclude the Developer or the Board of Directors, When Empowered, from providing such notice to an Owner in a written notice provided to the Owner at some point prior to or during the construction, placement or modification of the Improvement. Unless a longer period for commencement or completion is approved by the Architectural Control Authority, the failure of an Owner to commence or complete such construction, placement or modification of an Improvement, including the installation of any required landscaping, within the period provided by the Architectural Control Authority's approval shall be a violation of the Declaration, which shall, in addition to all other remedies set out in the Declaration, the Bylaws, the Regulations or under the law, include the removal of an Improvement from the Lot, such as by example an unfinished fence or shed or an incomplete or damaged Dwelling, in accordance with Section 11.4 of the Declaration.

Section 8.4 FENCES.

It is the goal to keep all fencing or screening harmonious with the architectural character of the community.

If approved by the Architectural Control Authority, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Architectural Control Authority. All fences shall be kept in good repair by the Owner.

All fences must be of an open picket style using black aluminum material with a height of not more than 48" above grade. Chain link fences are prohibited. Fencing installed by an Owner on his/her Lot shall only be installed no further than twenty (20') feet forward from the rear corner of the Dwelling Unit constructed by the Designated Builder, not including open or screened porches.

The Architectural Control Authority will approve fencing materials, landscape screening materials, design, and location on an individual basis. However, the Architectural Control Authority, in its sole and absolute discretion, may promulgate standards for fence materials and styles whereby any fences must be of uniform style, color and materials.

Section 8.5 TEMPORARY STRUCTURES.

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

Section 8.6 DRIVEWAYS.

All private driveways, right-of-ways, and culverts installed therein, shall be of a type and quality approved by Developer or the Architectural Control Authority and the grade of same shall be set by Developer or the Architectural Control Authority.

Section 8.7 OUTSIDE USE OF LOTS.

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

Section 8.8 ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE AND SIMILAR ITEMS.

No artificial vegetation shall be permitted on the exterior of any portion of the Community. Exterior sculpture, fountains, gazebos, arboretums, flags, and similar items are subject to Developer's or the Architectural Control Authority's prior approval; provided, however, that nothing contained herein shall prohibit the appropriate display of the American flag, provided such flag is no greater than 4' by 6' in dimension. Should the Architectural Control Authority approve a flag or if such flag is the American flag, the flagpole may only be mounted to the exterior of the Unit.

Section 8.9 SWIMMING POOLS.

Only below ground swimming pools constructed in accordance with applicable law and with prior written approval of the Architectural Control Authority shall be permissible in the Community. No above ground swimming pools are permitted in the Community.

Section 8.10 USE OF GARAGES.

Garages are to be used for parking vehicles and storage of personal property. Unless the Developer or the Board of Directors, When Empowered, gives written authorization to the contrary, no Owner shall: (i) use their garage in a manner that would prevent the immediate conversion of the garage space to accommodate parking or storage as determined by the Developer or the Board of Directors, When Empowered, (2) use their garage in such a way that creates a nuisance as determined by the Developer or the Board of Directors, When Empowered, or (3) use their garage for any other purpose that would permanently prevent parking or storage in the garage as determined by the Developer or the Board of Directors, When Empowered.

Section 8.11 EXCAVATIONS OR CHANGING ELEVATIONS.

No Owner shall excavate or extract earth for any business or commercial purpose within the Property. Additionally, no changes in the elevation, topography or drainage characteristics of any Lot within the Community shall be made without the prior written approval of the Developer or the Architectural Control Authority after termination of the Developer's Class "B" Membership.

Section 8.12 PROPANE TANKS.

Propane tanks shall not be permitted in the Community.

ARTICLE IX: OWNER'S MAINTENANCE RESPONSIBILITIES

Section 9.1 OWNER'S MAINTENANCE RESPONSIBILITIES.

Unless specifically identified herein or specifically elected by the Developer or the Board of Directors, When Empowered, as being the responsibility of the Association, all maintenance and repair of a Lot or Area of Extended Lot Owner Responsibility, together with all portions of the Dwelling, and other Improvements on the Lot, including without limitation landscaping maintenance, shall be the responsibility of the Owner of such Lot. The responsibility of each Owner shall include, but not be limited to, the painting, maintenance, repair, and replacement of walls or fences, and all siding, exterior doors, fixtures, mailboxes, equipment, and appliances (including, without limitation, the heating and air-conditioning system for the Dwelling) and all chutes, flues, ducts, conduits, wires, pipes, plumbing or other apparatus which are deemed to be a part of the Dwelling or Lot or Area of Extended Lot Owner Responsibility, and the lawns, trees, shrubs, fences, grass, driveways, walkways, patios, or sidewalks and any other landscaping component on the Lot or Area of Extended Lot Owner Responsibility. The responsibility of the Owner shall also include,

but not be limited to, the maintenance, repair, and replacement of all glass, lights and light fixtures (exterior and interior), awnings, window boxes, window treatments, window screens, and all screens or glass-enclosed porches, patios, balconies, or decks which are a part of the Dwelling. Each Owner shall also maintain roof, gutters and downspouts in a good state of repair. In addition, each Owner shall maintain their trash receptacles in such a manner as to prevent any foul or unpleasant odors from disturbing others, or odors that may attract animals. Each Owner shall ensure that trash receptacles containing building or construction waste and debris are maintained in a manner in keeping with the requirements of this Section, including without limitation the responsibility of keeping said receptacles from becoming overloaded with waste and debris or becoming an aesthetic eyesore or potential danger for others in the Community. Each Owner shall be responsible for the maintenance, repair and replacement of drainage on the Lot and the Area of Extended Lot Owner Responsibility of the Lot, that is not accepted for maintenance by any county or municipality, public or private drainage facility or other like entity, which drainage is located on the Lot or is located within the Area of Extended Lot Owner Responsibility for which that owner is responsible. The drainage shall include, but not be limited to, any drainage pipe, ditch, swale, grading, catch basin, yard drain, filtration and/or percolation field, structure or system, drainage related improvement or other type of structure providing for the drainage of one or more lots. The Developer and the Association, When Empowered, shall have the authority to enforce an Owner's maintenance responsibilities under this Article, pursuant to remedies set forth in this Declaration.

Section 9.2 OWNER MUST PROVIDE INSURANCE OF DWELLING.

Each Owner shall, at its own expense, insure the Dwelling and all other insurable Improvements on the Lot in an amount not less than the then current maximum insurable replacement value thereof. Such coverage shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsements and such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, and windstorm and water damage.

Section 9.3 RECONSTRUCTION OR REPAIR OF DAMAGED DWELLING.

If any Dwelling or other Improvement on a Lot or Area of Extended Lot Owner Responsibility shall be damaged by casualty, the Owner of such Lot shall promptly, as such period shall be deemed reasonable and appropriate by the Developer or the Board of Directors, When Empowered, reconstruct or repair it so as to restore such Dwelling nearly as possible to its condition prior to suffering the damage. All such reconstruction and repair work shall be done in accordance with plans and specifications therefor, approved by the Developer, or Board of Directors, When Empowered. Encroachments upon or in favor of Dwelling or Lots, which may be necessary for or created as a result of such reconstruction or repair, shall not constitute a claim or basis of a proceeding or action by the Owner on whose Dwelling or Lot such encroachment exists, provided that such reconstruction or repair is done substantially in accordance with the plans and specifications approved by the Architectural Control Authority or as the building was originally constructed.

Section 9.4 MAINTENANCE AND OPERATION OF IRRIGATION SYSTEMS ON LOTS.

(a) Unless such responsibility is voluntarily assumed by the Association, it shall at all times be the obligation of all Lot Owners to properly irrigate the landscaped areas of their Lot and, where an irrigation system has been installed on a lot, to maintain their irrigation system in a manner that allows for the proper operation of the system. The Developer or the Association, When Empowered, shall have the sole authority to determine what level of irrigation is proper and to define proper operation of an irrigation system. Where individual Lot-specific irrigation systems exist, upon receipt of notice from the Association that the irrigation system is not properly operating, that specific maintenance or repairs to the system are necessary or that an adjustment to the amount of or schedule for irrigation that is being provided to any portions of the landscaped areas of a Lot is necessary, a Lot Owner shall cause that repair or maintenance of the irrigation system to be performed in the time frame set out in the Association's notice or shall immediately commence or cease irrigation or increase or decrease the amount of irrigation or change the schedule for irrigation being provided to the landscaped areas of the Lot noted in that notice. Unless the cost and responsibility for the maintenance and/or utilities necessary to operate the irrigation system for a Lot is assumed by the Association, neither the Developer nor the Association shall have any responsibility for the maintenance of the irrigation system on an Owner's Lot or for the cost of the utilities required to operate the irrigation system. After notice from the Developer or the Association, When Empowered, to adjust or maintain their irrigation system or to provide irrigation to their Lot or to a specific portion of their Lot and after that Owner's failure to comply by the deadline provided with such notice, the Developer or the Association, When Empowered, may, in addition to any other remedies provided by the Declaration, the Bylaws or the Regulations, at any time thereafter repair, replace, engage, disengage or adjust the volume or schedule of any existing irrigation system for that Lot in order to provide proper irrigation of the landscaping intended to be irrigated by that system. This provision shall not be construed to enable the Developer or the Association to install an irrigation system on a Lot that, prior to that point, had no irrigation system; however, it shall not prohibit the Association from providing maintenance to an existing system or from extending an existing system to provide such irrigation to areas of an Owner's Lot that the Developer or the Association, When Empowered, deem to need irrigation.

(b) In some cases, the Developer or a builder, with the consent of the Developer, may determine that a Lot Owner benefits from the irrigation of landscaping on a Common Area that adjoins their Lot. In such cases, the Developer, in its sole discretion, may authorize the installation of an irrigation system for a Common Area or a portion thereof that is connected to or is a part of the irrigation system for that adjoining Lot and that relies upon the supply of water or power supply from the adjoining Lot to operate or may cause the irrigation system for that adjoining Lot to overspray onto a portion or all of the Common Area. In such cases, the Developer reserves unto itself and to the Association, a perpetual, alienable easement and right of ingress, egress and access, over, upon, across and under that Lot to install, maintain and replace such an irrigation system designed to provide irrigation for part or all of an adjoining Common Area. The Association shall be responsible for the maintenance of any portion of the irrigation system that is located on the Common Area and the Lot Owner shall be responsible for the maintenance of any portion of the irrigation system that is located on the Lot, along with all utilities required to operate the entire irrigation system. With the exception of the maintenance by the Association of any portion of the system that is located on the Common Area as set out in this paragraph, any requirement provided in this paragraph that an Owner maintain, repair or replace the irrigation system on such Owner's Lot or that the Owner adjust the schedule for irrigation for their landscaping when notified, shall include the requirement of that Owner to maintain, repair or replace the irrigation system on such Owner's Lot and to comply with the

directives of the Developer or the Association, When Empowered, so that the irrigation system on such Owner's Lot serves the Common Area, if either the irrigation system for such Owner's Lot is designed to overlap or provide coverage onto a Common Area or the irrigation system for the Common Area is connected to the irrigation system on such Owner's Lot.

(c) Where the irrigation system for a Lot is connected to a common supply of water for more than one Lot or where the Association assumes responsibility for supplying water to operate such a system or assumes responsibility for the maintenance, repair and replacement of the irrigation system, the Owner of such Lot shall not attempt to repair or adjust the operation of the irrigation system in any way without the express permission of the Developer or the Association, When Empowered. In such cases, the Association shall be authorized, without notice to the Owner of the Lot, to enter the Lot in accordance with the easement so granted by Section 2.28 herein, to provide inspection, repair or maintenance to the irrigation system. Where such inspection, repair or maintenance cost is not a part of the Association's Annual Assessment, the Association shall be entitled to levy a Specific Purpose Assessment against that Lot of the Owner to offset such cost, without prior notice to the Lot Owner, irrespective of whether or not that Lot has been designated as, or is a part of, a Specific Purpose Area. Where the need for such maintenance or repair is the result of the action(s) or inaction(s) of the Owner of a Lot, the Association shall be entitled to levy an Assessment for Non-Compliance against the Lot of that Owner. In addition to any other easements provided to the Developer or the Association, for the purpose of inspecting, maintaining and repairing the irrigation system on a Lot, the Developer and the Association, When Empowered, shall be provided with an easement of ingress and egress over the Lot and no such entry for the purpose of inspecting, repairing or maintaining such irrigation system shall be deemed a trespass.

## ARTICLE X: GRADING, DRAINAGE, EROSION CONTROL AND MINOR DRAINAGE

### Section 10.1 GENERAL GRADING, DRAINAGE AND EROSION CONTROL.

FOR PURPOSES OF THIS ARTICLE, THE RESPONSIBILITIES HEREINAFTER DESCRIBED OF AN OWNER OF A LOT SHALL INCLUDE THE CORRESPONDING AREA OF EXTENDED LOT OWNER RESPONSIBILITY, IN ADDITION TO THE LOT ITSELF. THE TOTAL RESPONSIBILITY FOR AND COST OF COMPLIANCE WITH THIS SECTION OF THE DECLARATION SHALL BE THAT OF THE OWNER OF THE LOT. ANY OR ALL OF THE RESPONSIBILITY OF THE DEVELOPER AS A LOT OWNER FOR DRAINAGE AND EROSION CONTROL ON OR FROM A LOT AND FOR THE COST THEREOF MAY, IF SO STATED IN THAT AGREEMENT, BE TRANSFERRED THROUGH THE EXECUTION OF A WRITTEN AGREEMENT BETWEEN THE DEVELOPER AND AN INDIVIDUAL OR ENTITY PURCHASING THAT LOT. THE DEVELOPER, OR THE ASSOCIATION, WHEN EMPOWERED, SHALL HAVE AS REMEDIES FOR NON-COMPLIANCE, THE LEVYING OF ASSESSMENTS FOR NON-COMPLIANCE AGAINST THAT LOT, THE AUTHORITY TO ENTER THE LOT AND TAKE APPROPRIATE ACTION TO REMEDY THE VIOLATION OR THE AUTHORITY TO BRING LEGAL ACTION TO FORCE THE OWNER OF THE LOT TO COMPLY WITH THE TERMS SET OUT HEREIN. IN THE EVENT THAT THE DEVELOPER OR THE ASSOCIATION TAKES SUCH ACTION TO ASSURE COMPLIANCE, AS WITH OTHER VIOLATIONS OF THE DECLARATION, ALL COSTS INCURRED BY THE DEVELOPER OR THE ASSOCIATION RELATED TO BRINGING THE LOT OR AREA OF

EXTENDED LOT OWNER RESPONSIBILITY INTO COMPLIANCE SHALL BE THAT OF THE LOT OWNER AND COLLECTABLE BY THE DEVELOPER FROM THE LOT OWNER OR IF BY THE ASSOCIATION, SHALL BE MADE A PART OF THE ASSOCIATION'S CONTINUING LIEN ON THE LOT.

ALL GRADING, DURING AND AFTER CONSTRUCTION, SHALL AT ALL TIMES BE PERFORMED IN ACCORDANCE WITH (A) ANY APPLICABLE PORTIONS OF THE STORM WATER MANAGEMENT PLAN, OR ANY SEDIMENT AND EROSION CONTROL PLAN, GRADING AND DRAINAGE PLAN, POLLUTION PREVENTION PLAN OR ANY OTHER APPLICABLE PLAN WHICH MAY BE ON FILE WITH THE DEVELOPER OR ASSOCIATION OR FILED WITH ANY APPLICABLE GOVERNMENTAL AGENCY OR AUTHORITY WHICH CONFORMS TO REGULATIONS PROMULGATED BY THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY AND/OR (B) ANY OTHER APPLICABLE LEGISLATION, LAW, STATUTE OR ORDINANCE GOVERNING THE CONTROL OF DRAINAGE. IT SHALL AT ALL TIMES BE THE RESPONSIBILITY OF THE OWNER OF THE LOT OR, IN THE CASE OF THE CONTRACTUAL TRANSFER OF THE RESPONSIBILITY FOR COMPLIANCE DIRECTLY FROM THE DEVELOPER TO AN INDIVIDUAL OR ENTITY, THAT INDIVIDUAL OR ENTITY, TO REQUEST AND REVIEW ALL SUCH APPLICABLE PLANS. UNLESS SUCH A REQUEST IS MADE BY SAID LOT OWNER, INDIVIDUAL OR ENTITY, FAILURE ON THE PART OF THE DEVELOPER OR ASSOCIATION TO SUPPLY THAT LOT OWNER, INDIVIDUAL OR ENTITY WITH COPIES OF THE APPLICABLE PLANS SHALL NOT BE A DEFENSE FOR NON-COMPLIANCE OR RELEASE OF RESPONSIBILITY ON THE PART OF THAT LOT OWNER, BUILDER, INDIVIDUAL OR ENTITY. ANY LOT OWNER, INCLUDING BUILDERS, OR BUILDER, BY ACCEPTANCE OF THE DEED TO A LOT, AND AT ALL TIMES THEREAFTER, SHALL HAVE BEEN DEEMED TO HAVE AGREED TO AND ACCEPTED THE RESPONSIBILITY ESTABLISHED BY A CO-PERMITTEE AGREEMENT AND TO HAVE ASSUMED THE RESPONSIBILITIES OF A CO-PERMITTEE AND BE BOUND TO THE ABOVE MENTIONED PLANS AND INDEMNIFY AND HOLD THE DEVELOPER, THE ASSOCIATION AND THE ARCHITECTURAL CONTROL AUTHORITY HARMLESS FROM ANY AND ALL DEVIATIONS BY THE LOT OWNER, OR THEIR BUILDER FROM THAT PLAN OR FROM THE LOT OWNER'S OR BUILDER'S FAILURE TO COMPLY WITH THIS DECLARATION OR ANY APPLICABLE LEGISLATION, LAWS, STATUTES OR ORDINANCES, WHETHER SUCH LANGUAGE IS INCLUDED IN THAT DEED, CONTRACT, OR ACCEPTANCE OR ASSIGNMENT DOCUMENT OR WHETHER THEY HAVE EXECUTED A "CO-PERMITTEE AGREEMENT" OR NOT.

ALL TEMPORARY AND PERMANENT GRADING SHALL BE PERFORMED IN A MANNER TO ALLOW FOR PROPER DRAINAGE. TO PROPERLY MANAGE THE FLOW OF STORM WATER RUN-OFF AND TO CONTROL EROSION. DURING AND AFTER CONSTRUCTION, OWNER (AND DURING CONSTRUCTION, OWNER'S BUILDING CONTRACTOR) SHALL BE RESPONSIBLE FOR MAINTAINING ALL GRADING AND DRAINAGE TO PREVENT THE DAMMING OF WATER, INCREASED RUNOFF, OR EROSION THAT RESULTS IN SEDIMENT LOSS. IN NO CASE SHALL SEDIMENT BE ALLOWED TO WASH ONTO OR ACCUMULATE ON ADJACENT LOTS, ADJACENT PROPERTIES, INTO BODIES OF WATER, ONTO THE STREETS OF THE COMMUNITY OR INTO THE STORM DRAINAGE

SYSTEM; OR TO ADVERSELY AFFECT ANY OF THESE AREAS OR IMPROVEMENTS. LOT OWNER AND LOT OWNER'S BUILDING CONTRACTOR SHALL PROVIDE RIP-RAP, GRAVEL EXITS, WATER BARS, BERMS, SEDIMENT FENCES, HYDRO-SEEDING, SOD, OR OTHER FORMS OF EROSION CONTROL AS MAY BE REQUIRED BY THE DEVELOPER, THE ASSOCIATION, OR THE ARCHITECTURAL CONTROL AUTHORITY OR ANY GOVERNMENTAL AGENCY.

OWNER (AND OWNER'S BUILDING CONTRACTOR UPON COMPLETION OF CONSTRUCTION) SHALL ENSURE THAT THE GRADE OF THE LOT AND AREA OF EXTENDED LOT OWNER RESPONSIBILITY, AND ANY ADJUSTMENT TO THAT GRADE THEREAFTER, DOES NOT CAUSE THE DEPTH OF ANY UTILITIES INSTALLED UPON THE LOT OR AREA OF EXTENDED LOT OWNER RESPONSIBILITY TO BE REDUCED TO LESS THAN THE STANDARD SET FORTH BY THE UTILITY PROVIDER OR ANY APPLICABLE CODE, STATUTE OR LAW, WHICHEVER MAY BE DEEPER.

#### Section 10.2 DRAINAGE RESPONSIBILITY OF OWNERS.

THE MAINTENANCE, REPAIR AND REPLACEMENT OF DRAINAGE, INCLUDING BUT NOT LIMITED TO ANY DRAINAGE PIPE, DITCH, SWALE, GRADING, CATCH BASIN, YARD DRAIN, FILTRATION AND/OR PERCOLATION FIELD, STRUCTURE OR SYSTEM, DRAINAGE RELATED IMPROVEMENT OR OTHER TYPE OF STRUCTURE PROVIDING FOR THE DRAINAGE OF ONE OR MORE LOTS THAT IS LOCATED ON A LOT OR WITHIN THE AREA OF EXTENDED LOT OWNER RESPONSIBILITY OF A LOT OWNER AND THAT IS NOT ACCEPTED FOR MAINTENANCE BY ANY COUNTY OR MUNICIPALITY, PUBLIC OR PRIVATE DRAINAGE FACILITY OR OTHER LIKE ENTITY, SHALL BE THE RESPONSIBILITY OF THE OWNER OF THE LOT ON WHICH THE DRAINAGE IS LOCATED OR OF THE OWNER OF THE LOT WHEN SUCH DRAINAGE IS LOCATED WITHIN THE AREA OF EXTENDED LOT OWNER RESPONSIBILITY FOR WHICH THAT OWNER IS RESPONSIBLE. DRAINAGE MAY, AT THE SOLE DISCRETION OF DEVELOPER OR THE BOARD OF DIRECTORS, WHEN EMPOWERED, BE ACCEPTED FOR MAINTENANCE BY THE ASSOCIATION. THE DETERMINATION AS TO WHETHER THE ASSOCIATION ASSUMES MAINTENANCE RESPONSIBILITY FOR ANY PORTION OF THE DRAINAGE SYSTEM LOCATED ON A LOT OR AREA OF EXTENDED LOT OWNER RESPONSIBILITY SHALL AT ALL TIMES BE THAT OF THE DEVELOPER, THE BOARD OF DIRECTORS, WHEN EMPOWERED.

IN THE EVENT THAT AN OWNER: (i) NEGLECTS OR FAILS TO MAINTAIN, REPAIR OR REPLACE SUCH DRAINAGE, INCLUDING, BUT NOT LIMITED TO COMPLIANCE WITH ANY REGULATIONS OR OTHER REQUIREMENTS ISSUED BY THE ASSOCIATION OR BY A GOVERNING BODY HAVING JURISDICTION OVER SUCH MATTERS; (ii) FAILS TO KEEP THE DRAINAGE LOCATED ON THEIR LOT OR AREA OF EXTENDED LOT OWNER RESPONSIBILITY FREE AND CLEAR OF OBSTRUCTIONS OR BLOCKAGE; OR (iii) SHALL DAMAGE OR DESTROY ANY PORTION OF THE DRAINAGE ON A LOT OR AREA OF EXTENDED LOT OWNER RESPONSIBILITY, THE DEVELOPER OR THE ASSOCIATION, WHEN EMPOWERED. MAY IN THE SOLE DISCRETION OF THE DEVELOPER OR THE BOARD OF

DIRECTORS, WHEN EMPOWERED, IN ADDITION TO ANY OTHER REMEDY, ENTER THE LOT OR AREA OF EXTENDED LOT OWNER RESPONSIBILITY AND PERFORM SUCH MAINTENANCE, REPAIRS OR REPLACEMENT AT SAID OWNERS' EXPENSE. THE DETERMINATION AS TO WHETHER A LOT OWNER HAS FULFILLED THEIR RESPONSIBILITY HEREUNDER SHALL AT ALL TIMES BE THAT OF THE DEVELOPER, THE BOARD OF DIRECTORS, WHEN EMPOWERED, OR OF AN ENTITY AUTHORIZED TO DO SO BY THE DEVELOPER OR THE BOARD OF DIRECTORS, WHEN EMPOWERED, IN THE SOLE DISCRETION OF EACH. IN THE EVENT THAT THE DEVELOPER OR THE BOARD OF DIRECTORS, WHEN EMPOWERED, DETERMINES THAT THE NEED FOR MAINTENANCE, REPAIR OR REPLACEMENT OF THE DRAINAGE, WHETHER SUCH DRAINAGE SYSTEM OR A PORTION THEREOF IS ACCEPTED FOR MAINTENANCE BY THE ASSOCIATION OR NOT, IS CAUSED THROUGH THE WILLFUL OR NEGLIGENT ACT OF AN OWNER OR THEIR PERMITTEES, THEN THE ASSOCIATION MAY PERFORM SUCH MAINTENANCE, REPAIR OR REPLACEMENT AT SUCH OWNER'S SOLE COST AND EXPENSE AND ALL COSTS THEREOF, TOGETHER WITH ANY ASSESSMENTS FOR NON-COMPLIANCE LEVIED BY THE ASSOCIATION AND ALL COSTS OF THE COLLECTION SHALL BE ADDED TO AND BECOME A PART OF THE ASSESSMENT TO WHICH SUCH OWNER IS SUBJECT AND SHALL BECOME A LIEN AGAINST THE LOT OF SUCH OWNER. EACH OWNER IS RESPONSIBLE FOR THE ACTIONS OF AND THE COMPLIANCE WITH THE REQUIREMENTS HEREIN BY THEIR PERMITTEES AND SHALL FURTHER BE RESPONSIBLE FOR THE PAYMENT OF ANY ASSESSMENTS LEVIED FOR ANY SUCH NON-COMPLIANCE AND ALL COSTS ASSOCIATED THEREWITH. The Developer and the Association, When Empowered, shall have the authority to enforce an Owner's maintenance responsibilities under this Article, pursuant to remedies set forth in this Declaration.

## ARTICLE XI: REMEDIES

### Section 11.1 REMEDIES FOR NONPAYMENT OF ASSESSMENTS.

Any Assessments not paid by the due date shall bear interest from the due date at the rate of sixteen percent (16%) per annum or, if sixteen percent (16%) is higher than allowed by law, then the highest rate allowed by law. Said interest shall be charged at the discretion of the Developer or the Board of Directors, When Empowered. In addition, the Developer or the Board of Directors, When Empowered, shall have the right to charge an Association collection fee or late charge on any Assessment or installment thereof which shall not have been paid by its due date. In the event that the Developer or the Board of Directors, When Empowered, chooses an installment schedule for the method of payment for an Assessment or as a method of allowing an Owner to pay past due Assessments, and in the event that any installment is delinquent, the Developer or the Board of Directors, When Empowered, shall have the right to accelerate and immediately make due all or part of the Assessment due from that Owner of that Lot for that budgeted period. The Developer or the Board of Directors, When Empowered, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the Lot(s) in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of mortgages on time shares or for the foreclosure of mortgages by judicial proceedings, and may seek a deficiency judgment, and recovery of Costs of Collection. No Owner may waive or otherwise escape liability for the Assessments

provided for herein by non-use of the Common Area or abandonment of his Lot nor shall damage to or destruction of any Improvements on any Lot by fire or other casualty result in any abatement or diminution of the Assessments provided for herein. No disagreement on the part of any Owner with respect to the budget, the amount or installment schedule for any Assessment, any change to the amount or installment schedule for the Assessment; the Regulations established or amended by the Developer or the Board of Directors, When Empowered, the actions or lack of action on the part of the Developer or the Association, the purpose for any Assessment for Capital Repair or Improvements; or the amount or purpose of any Assessment for Budgetary Shortfall shall be reason for any Owner to fail to pay any Assessment at the time that it is due. Additionally, no diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged or proven failure of the Association, Developer or Board of Directors to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken or not taken by the Association, Developer or Board of Directors. The Developer or Board of Directors, When Empowered, may at any time notify the holder of any mortgage or other lien on a Lot of (1) any amount owed to the Association by the Lot Owner, (2) the failure of the Lot Owner to pay Assessments, or (3) the occurrence of any other violation of the Declaration.

Section 11.2 REMEDIES FOR NONPAYMENT OF AD VALOREM TAXES OR LEVIES FOR PUBLIC IMPROVEMENTS BY THE ASSOCIATION.

Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or Assessments levied for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or Assessments in an amount determined by dividing the total taxes and/or Assessments due the governmental authority by the total number of Lots in the Community. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien, subordinate to all mortgages on the Lot of the then Owner, his or their heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

Section 11.3 REMEDIES FOR FAILURE TO MAINTAIN EXTERIOR OF DWELLING AND LOT.

In the event that the Owner neglects or fails to maintain his Lot, Area of Extended Lot Owner Responsibility, and/or the exterior of his or her Dwelling in the Community, the Developer or the Association, When Empowered, may in addition to any other remedy, provide such exterior maintenance. The Developer or the Association, When Empowered, shall first give written notice to the Owner of the specific items of the exterior maintenance or repair that the Association intends to perform and the Owner shall have the time set forth in said notice within which to perform such exterior maintenance himself or to satisfy the Association that the required maintenance or repair will be completed in a timely manner. The determination as to whether an Owner has neglected or failed to maintain his Lot, Area of Extended Lot Owner Responsibility, and/or Dwelling in a manner consistent with other Lots, Areas of Extended Lot Owner Responsibility and Dwellings in the Community shall be made by the Developer or the Board of

Directors, When Empowered, in its sole discretion, or an entity authorized to do so by the Developer or the Board of Directors, When Empowered.

In the event the Association performs such exterior maintenance, repair or replacements, the costs of such maintenance, repairs or replacement together with all costs of collecting from the Owner the cost of such maintenance, repairs or replacement established herein shall be added to and become a part of the Assessment to which that Lot is subject.

In the event that the Association determines that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner or the Permittees of any Owner, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof, together with any Assessments for Non-Compliance levied by the Association for non-compliance and all costs of the collection shall be added to and become a part of the Assessment to which such Owner is subject and shall become a lien against the Lot of such Owner. Each Owner is responsible for the actions of and the compliance with these documents and the Regulations by the Permittees of that Owner and shall further be responsible for the payment of any Assessments levied for that non-compliance.

Section 11.4 REMEDIES FOR FAILURE TO COMPLETE OR REPAIR A DAMAGED OR NON-COMPLIANT DWELLING OR OTHER IMPROVEMENT.

In the event that: (a) an Owner or their builder fails to complete a Dwelling or other Improvement within the timeframe provided in an approval granted by the Developer or the Architectural Control Authority for that Improvement or Dwelling; (b) an Owner fails to repair or remove a damaged Dwelling or other Improvement after notice from the Developer or the Association, When Empowered, to repair or remove a damaged Dwelling or other Improvement; or (c) that an Owner fails to apply for and to obtain written approval from the Architectural Control Authority for a Dwelling or other Improvement, all of which shall be violations of the Declaration, the Developer or the Association, When Empowered, may in addition to any other remedy provided by this Declaration or the law, enter the Lot and either remove the non-compliant Dwelling or other Improvement or bring the non-compliant Dwelling or other Improvement into compliance at the Lot Owner's expense. The Developer or the Association, When Empowered, shall first give written notice to the Owner of the Lot of the Owner's responsibility to complete, repair, replace or remove the Dwelling or other Improvement or to apply for and to obtain approval by a deadline established in such notice, as well as of the Association's intent to take such action as may be necessary to remedy the violation, including the Developer's or the Association's, When Empowered, intent to complete, repair, replace or remove the Dwelling or other Improvement, at the Owner's expense.

The Owner shall have the time set forth in said notice within which to bring the Dwelling or other Improvement into compliance or to satisfy the Association that the Dwelling or other Improvement will be brought into compliance in a timely manner. The determination as to whether an Owner has failed to comply with the approval granted by the Architectural Control Authority and what period is reasonable for bringing the Dwelling or other Improvement into compliance shall at all times be made by the Developer or the Board of Directors, When Empowered, in its sole discretion.

In the event the Association performs such completion, repair, replacement or removal, the costs of such completion, repair, replacement or removal, along with any Assessment for Non-Compliance levied by the Association and all costs of collecting from the Owner the cost of such completion, repair, replacement or removal and any Assessment for Non-Compliance levied by the Association shall be added to and become a part of the Assessment to which that Lot is subject and shall become a lien against the Lot of such Owner.

Section 11.5 ADDITIONAL REMEDIES.

Enforcement of the Declaration, Bylaws, and the Regulations, in addition to any other remedy set out herein, may be carried out by the Developer and the Association through, at their sole discretion, arbitration or any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction in the Declaration, Bylaws, or Regulations, either to prevent or restrain violations, to recover damages or to compel a compliance to the terms thereof. Any failure by the Developer, the Association, When Empowered, or any Owner to enforce any covenant or restriction herein contained or contained in the Declaration or Bylaws or to enforce any of the Regulations shall in no event be deemed a waiver of a right to do so thereafter. In addition to the foregoing, the Developer or the Board of Directors, When Empowered, shall have the right wherever there shall have been built on any Lot or Area of Extended Lot Owner Responsibility any Improvement which is in violation of the Declaration, Architectural Control Authority's approvals or Regulations to enter upon the Lot or Area of Extended Lot Owner Responsibility where such violation exists and summarily abate or remove the same at the expense of the Owner, including without limitation the right to cease current construction and enjoin further construction, if after written notice of such violation, it shall not have been corrected by the Owner within the time required by the notice of violation. Any such entry and abatement or removal shall not be deemed a trespass.

(a) The Developer or the Association, When Empowered, may, in addition to any other remedy, suspend the Common Area enjoyment rights of any Owner, their Permittees or any of their pets or animals, for an appropriate period of time to be determined on a case-by-case basis by the Developer or the Board of Directors, When Empowered, for any non-compliance with the provisions of this Declaration, the Bylaws or of the Regulations. The right, however, of a Member to ingress and egress over the roads and/or parking areas shall not be suspended if they provide necessary access to their Lot.

(b) The Owner grants to the Developer and the Association the right and permission to enter the Lot to remove or correct any violation of the Declaration, Bylaws or Regulations, including but not limited to, the maintenance of Lots, Areas of Extended Lot Owner Responsibility or any Improvement thereon, and the removal of abandoned automobiles from any portion of the Property considered by the Board of Directors to be in violation with the Regulations, Declaration, Bylaws or to be a nuisance.

(c) In addition to the remedies outlined in this Article, the Developer or the Association, When Empowered, may, but shall not be required to, enter upon any Lot(s), Area of Extended Lot Owner Responsibility or Common Area, seize and either deliver to the animal control authority at the Owner's cost, any pet or other animal that is not in compliance with the Declaration, Bylaws, or the Regulations or is a nuisance. Notice of non-compliance shall be given to any Owner whose pets or animals are not in compliance, except when said non-compliance creates an emergency as determined by the Developer or

the Board of Directors, When Empowered. The departure, while not under the restraint of a leash, of any pet or other animal from the Lot of its Owner, shall immediately constitute an emergency and there shall be no requirement for notice to be given.

(d) In addition to the remedies outlined above in this Article, the Developer, or the Association, When Empowered, shall have the right to arrange for the removal, at the Owner's expense, of any vehicle that is parked in violation of the Declaration or the Regulations after notice to the Owner of the Lot on or beside which the vehicle is parked. Notice of non-compliance shall be given to any Owner where the parking of a vehicle or vehicles, except when said non-compliance creates an emergency as determined by the Developer or the Board of Directors, When Empowered. The parking of a vehicle which impedes the passage of any emergency vehicle or school bus, shall immediately constitute an emergency and there shall be no requirement for notice to be given.

(e) In addition to the remedies outlined above in this Article, despite the payment of any Assessments, the Developer, or the Association, When Empowered, shall have the right to terminate, change, suspend, increase, or decrease, in the sole discretion of the Developer or the Board, When Empowered and without the consent of the Owners or their mortgagees, any and all Special Services and other services provided by the Association to its Members, including without limitation review and/or approval of architectural plans by the Architectural Control Authority, to those Members who are not in compliance with the terms of the Declaration, the Bylaws, the Architectural Control Authority's approvals, or the Regulations, including without limitation those Members who owe past due Assessments, until such time as the Member comes back into compliance.

(f) With regard to Owners of multiple Lots in the Community, including without limitation builders, and in addition to the remedies outlined above in this Article, the Developer, or the Association, When Empowered, shall have the right to apply delinquent Assessment amounts owed on one or more of the Owner's Lots to the Association's all-encompassing lien over all the Lots in the Community owned by that Owner, and the Developer and the Association, When Empowered, shall possess all the rights and powers of remedying delinquent Assessments and enforcing its continuing lien on the Lots as set forth in the provisions of this Declaration. The Association's all-encompassing lien over said Lots shall not be released on the individual Lots it covers until any and all Assessment delinquencies for all the Owner's Lots have been remedied by the Owner, unless otherwise authorized by the Developer or the Association, When Empowered. If such a Lot is sold without payment of its delinquent assessments, the Association may apply that delinquent amount to its all-encompassing lien over that Owner's remaining Lots in the Community.

(g) All costs incurred by the Developer (in its capacity as a Class "B" Member) or the Association, When Empowered, as a result of any violation(s) of any provision of this Declaration, the Architectural Control Authority's approvals, or the Regulations, including without limitation all Costs of Collection, shall be a lien upon the affected property and a personal obligation of the applicable Owner.

Section 11.6 DEVELOPER'S CLASS "C" MEMBERSHIP ENFORCEMENT REMEDIES.

- (a) In addition to the remedies outlined above in this Article and in addition to any other remedies or rights reserved to the Developer under a previously recorded document affecting the Property or a portion thereof, the Developer's right to enforce the provisions of this Declaration, the Bylaws, the Architectural Control Authority's approvals, and the Regulations shall extend for as long as the Developer owes any duties or obligations to a governmental body, district, agency, or authority exercising jurisdiction over a portion of the Property, even if the Developer has already turned over control of the Association to a Member-elected Board of Directors and even if the Developer's Class "B" Membership has converted to Class "C" Membership; provided that the Developer may exercise the extended enforcement rights described in this Section for purposes including, but not limited to, (1) responding to a request or demand of a governmental body, district, agency, or authority exercising jurisdiction over a portion of the Property; or (2) in the sole discretion of the Developer, preventing an anticipated request or demand of a governmental body, district, agency, or authority exercising jurisdiction over a portion of the Property.
- (b) The Developer may exercise its extended enforcement powers described in this Section: (1) through the Association, whereby the Association exercises its enforcement powers under this Declaration in order to adequately respond to, or attempt to prevent, the request or demand of a governmental body, district, agency, or authority; or (2) independently of the Association, whereby the Developer exercises any and all enforcement powers reserved to it under the Declaration in order to adequately respond to, or attempt to prevent, the request or demand of a governmental body, district, agency, or authority, including without limitation the right to enter any portion of the Property to remedy a violation, the right to impose Assessments for Non-Compliance and the right to file a lien upon the Lot of the Owner against whom enforcement is being sought for the amount of such Assessments, and the right to bring any and all other legal actions to force compliance by an Owner. In the event the Developer exercises said extended enforcement powers, all costs incurred by the Developer, including reasonable attorneys' fees, shall be the responsibility of the Lot Owner(s) against whom enforcement was sought and shall be added to the lien filed by the Developer against said Lot Owner, if applicable. The provisions of this Section provide the Developer with the option of exercising extended enforcement powers under the Declaration as a Class "C" Member; however, they do not impose any duty or obligation upon the Developer to do so and these rights shall extend beyond the termination of the Developer's Class "B" Membership.

Section 11.7 REMEDIES CUMULATIVE.

The remedies available pursuant to this Declaration are cumulative, separate and independent, and exercise of any remedy shall not preclude exercise of any other remedy available at law or equity.

ARTICLE XII: ANNEXATION AND REMOVAL OF PROPERTY & ADDITIONAL MATTERS  
DEALING WITH PHASED COMMUNITY

Section 12.1 ANNEXATION OF ADDITIONAL PROPERTY OR REMOVAL OF PROPERTY.

The Developer shall have the right to annex additional property into the Property and designate the use of such property or any portion of the property (e.g., Lots or Common Area) by the filing of an

amendment, addendum or supplement to this Declaration describing the property annexed and imposing this Declaration upon such property or any portion of the property. All property annexed in this manner shall be a part of the Property and Community as fully as if it had been a part thereof from the filing of this Declaration. As property is added to the Community, the Lots, if any, comprising such additional property shall be counted for the purpose of voting rights. So long as the Developer owns any portion of the Property, the Developer shall have the right to remove portions of the Property from the operation of the Declaration by filing an amendment, addendum or supplement to this Declaration describing the portion of the Property removed and releasing said portion from this Declaration.

Section 12.2 SUBORDINATE ASSOCIATION(S), NEIGHBORHOODS AND SPECIFIC PURPOSE AREAS.

In the event that a Parcel is submitted to the North Carolina Condominium Act or if such Parcel is developed as commercial property or as a single-family, townhouse or duplex residential development, in all of which cases it shall be subjected to either a Declaration of Condominium or a Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens, which shall be subordinate to this Declaration, there shall be established for each Parcel, or portion of a Parcel, an association of owners within the Parcel in order to promote their health, safety and social welfare, as well as to provide for the maintenance of the Units and Lots within that Parcel and other improvements and common elements or common areas located within that Parcel. Each Parcel submitted to the North Carolina Condominium Act or a Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens and subject to this Declaration shall be subject to a Subordinate Declaration. Each Subordinate Declaration and Sub-Association shall be subject to the provisions of this Declaration, the Association and the By-Laws of the Association, and all rights, covenants, conditions and easements therein shall be in addition to, but not in abrogation or substitution of, those imposed hereby.

The Developer or the Board of Directors, When Empowered, may create additional Neighborhoods or Specific Purpose Areas within the Community, all without notice to or the consent of any Owner. The establishment of Neighborhoods, Neighborhood Architectural Control Authorities, Specific Purpose Areas, or Specific Purpose Committees, if and when designated, shall not be construed as creating Sub-Associations, unless expressly created and recognized as such by the Developer or the Association, When Empowered.

### ARTICLE XIII: GENERAL PROVISIONS

Section 13.1 DURATION.

The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the sole benefit of and be enforceable by the Developer, so long as the Developer owns any portion of the Property, and thereafter to the Association. All covenants, conditions, limitations, restrictions, obligations and rights set forth in this Declaration, as the same may be amended from time to time, shall be binding and run with the land and continue until twenty-one (21) years from the date of execution hereof, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by two-thirds (2/3) of the then Owners affected by the same has been recorded,

agreeing to change the same in whole or in part; provided, however, that all property rights and other rights reserved to the Developer shall continue forever to the Developer, except as otherwise herein provided.

Section 13.2 NOTICE.

Any notice required to be sent to any Member or Owner under the provision of this Declaration and service of any legal proceedings shall be deemed to have been properly sent and received when personally delivered or mailed, postpaid, to the last known address of the person who appears as that person authorized to receive notice or to vote as shown on the records of the Association at the time of such mailing. Any such notice shall be deemed validly given if provided in English, unless otherwise approved by the Board of Directors. It shall be the responsibility of an Owner to have notices or other correspondence translated to the language of their origin or language of common usage. The Developer or the Association, When Empowered, shall in no event bear any responsibility or cost for providing translators or translated notices.

All notices under this Article to amend, amend and restate, change, add to, derogate or delete this Declaration, including without limitation, the covenants, restrictions, easements, charges, and liens set forth herein, with express exception to any acts to amend, amend and restate, change, add to, derogate or delete by the Developer under the authority granted to the Developer herein, must be express written notices, must contain the wording of the amendment including any language or provisions to be added, deleted, or otherwise modified, which is the subject of the vote to be cast or the consents sought and must be provided to all Owners entitled to vote or consent.

It shall at all times, including immediately following the initial transfer or subsequent transfers of title to an improved or unimproved Lot, be the responsibility of any Owner to file written notice with the Association of the name and address of the person authorized to receive notification from the Association or the Developer as to Assessments, or infractions of the Regulations. Proof of the authority to receive notice and to vote shall be presented to the Association in the form of a certificate signed by the Owner of a Lot or HUD Settlement. Such certificate shall be deemed valid until revoked by a subsequent certificate. The Association does not have to send notice or service to any other address. If the Owner does not file such certificate, the notice or service shall be sufficient if delivered, posted or mail postpaid to the Lot.

Section 13.3 SETTLEMENT STATEMENT AUTHORIZATION.

The Owner by acceptance of the deed authorizes and directs the closing attorney to provide the Association with a copy of the Settlement Statement from the closing transferring the Lot and/or Dwelling to the Owner.

Section 13.4 SEVERABILITY.

In the event that any one or more of the provisions of this Declaration, including, without limitation, any of the foregoing conditions, covenants, restrictions, or reservations, shall be declared for any reason by a court of competent jurisdiction to be null and void, such judgment or decree shall not in any manner whatsoever effect, modify, change, abrogate, or nullify any of the provisions of this Declaration not so

declared to be void but all remaining provisions of this Declaration not so expressly held to be void shall continue unimpaired and in full force and effect.

Section 13.5 AMENDMENT.

- (a) The Developer reserves the right, from time to time in its sole discretion without the consent of the Owners, their mortgagees, or the Association, to amend, alter or delete the square footage requirements as established by the Developer or as set out in the Architectural Control Authority's approvals, the Architectural Guidelines and Regulations.
- (b) In addition to any other manner herein provided for the amendment of this Declaration, this Declaration, including without limitation, the covenants, restrictions, easements, charges, and liens set forth herein, may be amended, amended and restated, changed, added to, derogated or deleted at any time and from time to time upon the execution and recordation of any instrument executed by Owners holding not less than a majority of votes of the Members, provided that when the Developer has Class "B" Membership, the Developer's prior written consent to any such amendment to the Declaration or any amendment to the Bylaws and the Regulations or Architectural Control Authority's approvals, builder building requirements must be obtained; provided, further, that the provisions for voting of Class "A" and Class "B" Members as herein contained in this Declaration shall also be effective in voting changes in this Declaration; and provided, further that express written notices containing the wording of the amendment, including any language or provisions to be added, deleted, or otherwise modified, which is the subject of the vote to be cast or the consents sought, must be provided to all Owners entitled to vote or consent in accordance with the notice requirement set out in the Declaration.
- (c) Without limiting the foregoing, the Developer or the Board of Directors, When Empowered, shall, at any time and from time to time, as they see fit, have the right to cause this Declaration to be amended to correct any clerical or scrivener's error(s).
- (d) In addition, any provision of this Declaration which contradicts the requirements of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") or the Federal National Mortgage Corporation ("FNMC") or any other insurer or purchaser of mortgage secured by the Lots, as the same may be amended from time to time, shall be automatically deemed amended and modified so as to comply with such requirements if one or more Owners obtains FHA, VA, or FNMC financing and the Developer or the Board of Directors, When Empowered, consents in writing. Without limiting the foregoing, if required to effect any amendments made pursuant to the previous sentence, the Developer or the Board of Directors, When Empowered, shall, at any time and from time to time, as they see fit, have the right to cause this Declaration to be amended.
- (e) Notwithstanding the above-stated amendment rights, under no circumstances shall the Owners, the Association, When Empowered, or its Board of Directors, When Empowered, amend this Declaration, the Bylaws or the Regulations so as to delete, lessen, or otherwise negatively affect the rights granted or reserved to the Developer in this Declaration, the Bylaws or the Regulations,

and if any amendments are passed and recorded in violation of this Section, such amendments shall be null and void.

Section 13.6 AMENDMENT BY DEVELOPER.

In addition to any other right to amend as set out herein, until the termination of Developer's Class "B" Membership or upon reinstatement of the Developer's Class "B" Membership as a result of the annexation of additional property into the Community, but not the reacquisition of a Lot or Lots previously owned by the Developer, this Declaration, including without limitation, the covenants, restrictions, easements, charges, and liens set forth herein, the Bylaws, the Regulations, Architectural Guidelines and builder requirements or Architectural Control Authority approvals may be amended, amended and restated, changed, added to, derogated or deleted by the Developer, from time to time in its sole discretion without the consent of the Owners, their mortgagees, or the Association, by the execution and recordation of any instrument executed by the Developer. Subject to the Declaration, every purchaser or grantee of any Lot or Common Area now and hereafter, by acceptance of a deed or other conveyance thereof, agrees that the Declaration may be amended or otherwise changed as provided herein and such amendment shall be applicable to and binding upon the Owners and the Lots. At the option and sole discretion of the Developer, any and all amendments to this Declaration made under the authority of this Section may apply: (i) upon the day of execution or recording; (ii) retroactively to the date of this Declaration or to some other specified date in the amendment; or (iii) prospectively to some specified date in the amendment.

Section 13.7 AMENDMENT OF PLATS.

In addition to any other right to amend as set out herein, until the termination of Developer's Class "B" Membership or upon reinstatement of the Developer's Class "B" Membership as a result of the annexation of additional property into the Community, but not the reacquisition of a Lot or Lots previously owned by the Developer, the Plats, including without limitation, any covenants, restrictions, easements, charges, and liens set forth therein may be amended, amended and restated, changed, added to, derogated or deleted by the Developer, from time to time in its sole discretion without the consent of the Owners, their mortgagees, or the Association, by the recordation by the Developer of any plat amended, supplementing or replacing any of the existing Plats. Every purchaser or grantee of any Lot or Common Area now and hereafter, by acceptance of a deed or other conveyance thereof, agrees that the Plats may be amended or otherwise changed as provided herein and such amendment shall be applicable to and binding upon the Owners and the Lots. At the option and sole discretion of the Developer, any and all amendments to the Plats made under the authority of this Section may apply: (i) upon the day of execution or recording; (ii) retroactively to the date of this Declaration or to some other specified date in the amendment; or (iii) prospectively to some specified date in the amendment.

Section 13.8 EFFECTIVE DATE.

This Declaration shall become effective upon its recordation with the Register of Deeds.

Section 13.9 PAID PROFESSIONAL MANAGER.

The Developer or the Board of Directors, When Empowered, may employ a manager or managerial firm to supervise all work, labor, services, and material required in the operation and maintenance of the Common Area and in the discharge of the Association's duties throughout the Community.

Section 13.10 BINDING EFFECT.

This Declaration shall inure to the sole benefit of the Developer for so long as the Developer owns any portion of the Property, and thereafter to the Association. This Declaration shall be binding upon the parties hereto, including without limitation all Owners, and the purchasers of Lots, their heirs, personal representatives, successors and assigns.

Section 13.11 WAIVER.

The failure to enforce any rights, reservations, restrictions, or conditions contained in this Declaration, however long continued, shall not be construed to constitute a precedent or be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

Section 13.12 ATTORNEYS' FEES AND COST.

Should the Developer or the Association employ counsel to enforce the Declaration, the Bylaws or the Regulations or to bring an action for damages, injunction or declaratory judgment or any other action at law or in equity because of a breach of the same including, but not limited to, collection or attempted collection of Assessments, all Costs of Collection incurred in such enforcement or action, including a reasonable fee for the Developer's or the Association's counsel, shall be paid by the Owner of such Lot or Lots in breach thereof. Should the Developer or the Association, When Empowered, find it necessary to bring an action for Declaratory Judgment or to appear in an action for Declaratory Judgment or any other action at law or in equity, the Developer and the Association, When Empowered, shall be entitled to all Costs of Collection, including but not limited to, attorneys' fees and cost, from the party who questioned the Developer's or the Association's, When Empowered, interpretation of this Declaration, the Bylaws or the Regulations or the enforceability of the same.

Section 13.13 NO CONSTRUCTION AGAINST ANY OWNER OR ASSOCIATION.

Each Owner, having been given an opportunity to review this Declaration prior to its recording and/or having purchased its Lot(s) with this Declaration of public record and recorded against such Lot(s), is deemed to have accepted the terms of this Declaration. In the event of any dispute over the interpretation of this Declaration, any rule of construction requiring that the Declaration be construed in favor of or against any Owner, the Developer or the Association shall not be applicable.

Section 13.14 DEVELOPER LIABILITY AND HOLD HARMLESS.

The Developer herein shall not, in any way or manner, be liable or responsible for any violation of the Declaration by any person other than itself. The Owners and the Association shall hold harmless the Developer from any liability, loss or cost arising out of their or their Permittees' violation of the Declaration.

Section 13.15 SAFETY AND SECURITY.

Each Owner and their respective Permittees, shall be responsible for their own personal safety and the security of their property in the Community. The Developer and the Association, When Empowered, shall have no duty to enhance the level of safety or security which each person provides for himself or herself and his or her property, nor shall the Developer or the Association, When Empowered, have any duty to respond to a safety or security problem if provided notice of such, although nothing herein shall prevent the Developer or the Association, When Empowered, from voluntarily (1) passing on such notification to the proper law enforcement or governmental authorities, (2) responding in some other manner to protect safety or security, or (3) taking action to enhance the level of safety or security in the Community. Neither the Developer nor the Association, When Empowered, shall in any way be considered insurers or guarantors of safety or security with the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or failure to respond adequately to a security problem or the dangerous or hazardous condition of the Property. Each Owner acknowledges, understands, and shall be responsible for informing its Permittees that the Developer, the Association, When Empowered, and its Board of Directors and Committees are not insurers or guarantors of security or safety and that each person with the Community assumes all risks of personal injury and loss or damage to property, including Dwellings and the contents therein, resulting from acts of third parties or from any dangerous or hazardous condition. Each Owner also acknowledges, understands, and shall inform its Permittees that they are responsible for contacting the appropriate public authorities directly when safety or security problems arise.

Section 13.16 TIME REDUCTION.

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

Section 13.17 BINDING ARBITRATION.

Each Owner, by acceptance of a deed for a Lot, agrees that any dispute arising out of the use, occupancy, or ownership of a Lot or the Common Area or the interpretation or enforcement of this Declaration, the Regulations, the Architectural Control Authority's approvals or the Bylaws or any provision hereof or thereof shall be settled by binding arbitration pursuant to the Revised North Carolina Uniform Arbitration Act (N.C.G.S.A. Ch. 1, Subch. XV, Art. 45C et seq.), as amended. The Developer and the Association shall have the right to pursue such remedies as are available to it at law or in equity and shall not be bound by this mandatory binding arbitration provision. The arbitration requirement does not limit the right of any party to (i) foreclose any lien against real or personal property created pursuant to this

Declaration; (ii) exercise self-help remedies relating to the Property provided for in this Declaration; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding.

Section 13.18 ASSIGNABILITY OF RIGHTS AND POWERS.

By the filing of a document with the Register of Deeds or by providing notice, the Developer or the Association, When Empowered, may assign, either permanently or temporarily or in part or in whole, any or all of the rights and powers granted or arising from the Declaration to one or more entities or persons without the consent of any Owner. The Developer or the Association, When Empowered, may delegate any of the above-stated powers and rights to the same extent as it may assign them without any recording or notice requirements.

Section 13.19 EMINENT DOMAIN.

The term “Taking” as used in this Section means condemnation pursuant to Chapter 40A of the North Carolina General Statutes, as the same may be amended from time to time, or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Area, the Owners appoint the Developer, or the Board of Directors, When Empowered, to act as attorney-in-fact for all Owners in the proceedings incident to the Taking unless otherwise prohibited by law. No Owner, by virtue of his Lot ownership or membership in the Association, shall be entitled to independently participate as a party in any condemnation proceedings or directly participate in any condemnation award. The Developer, or the Board of Directors, When Empowered, shall have the right to make a voluntary sale to the condemnor in lieu of engaging in the condemnation action. Any awards received as a result of the Taking shall be paid to the Association. The Developer, or the Board of Directors, When Empowered, without the necessity of a vote of the membership of the Association, may (1) retain any award in the general funds of the Association, (2) use such award for the restoration or replacement of any Common Area improvements affected by the Taking, or (3) distribute the proceeds in any such manner as the Developer or the Board of Directors, When Empowered, deems appropriate. Notwithstanding the foregoing, this Section shall in no way limit or impair the Developer’s right, in its sole discretion, to remove the property which is subject of the Taking from the Community pursuant to the authority granted in Section 12.1 herein and to retain any proceeds deposited with the court as a result of the Taking.

ARTICLE XIV: STORMWATER DRAINAGE AND PERMITTING

Section 14.1 STORM DRAINAGE.

The Property and the use thereof is subject to the conditions set forth in the State Stormwater Management Permit Number SW8 230809, as renewed and modified from time to time (the “Stormwater Management Permit”), issued by The Division of Energy, Mineral and Land Resources of the State of North Carolina Department of Environmental Quality (the “Division”). Pursuant to the terms of that Permit, the Declarant hereby states that:

1. The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 230809, as issued by the Division under 15A NCAC 02H.1000, effective January 1, 2017 (the “Stormwater Management Regulations”).
2. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Permit.
3. These covenants are to run with the land and be binding on all persons and parties claiming under them.
4. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the Division.
5. Alteration of the drainage as shown on the approved plans may not take place without the concurrence of the Division.
6. The maximum built-upon area (“**BUA**”) per lot, in square feet, is listed below. It is specifically noted that the roadside-draining portion of the “built-upon” area on Lots 1-5, 19-48, and 60-71 is subject to the high-density restriction #8 and the rear-lot draining portion of the built-upon” area on Lots 1-5, 19-48, and 60-71 is subject to the low-density restriction #9 and #10.

<b>Lot</b>	<b>Allowable BUA</b>	<b>Additional Restriction</b>	<b>Lot</b>	<b>Allowable BUA</b>	<b>Additional Restriction</b>
*1-5 (roadside)	3,500 sf	#8	49-59 (total)	4,000 sf	#8
*1-5 (rear)	2,300 sf	#9 & #10	***60-71 (roadside)	3,500 sf	#8
6-18 (total)	4,000 sf	#8	***60-71 (rear)	1,630 sf	#9 & #10
**19-48 (roadside)	3,500 sf	#8	72-137 (total)	4,000 sf	#8
**19-48 (rear)	1,175 sf	#9 & #10	Outparcel	85,000 sf	#8

\* The total allowed BUA for lots 1-5 is 5,800 sf, partitioned as above.  
 \*\* The total allowed BUA for lots 19-48 is 4,675 sf, partitioned as above.  
 \*\*\* The total allowed BUA for lots 60-71 is 5,130 sf, partitioned as above.

This allotted amount includes any built-upon area construction 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.

7. Each lot will maintain a 50-foot-wide vegetated buffer between all impervious areas and surface waters.

**Additional Restriction for High-Density Basin(s):**

(Front of Lots 1-5, 6-18, Front of Lots 19-48, 49-59, Front of Lots 60-71, 72-132 and Outparcel)

8. 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 to 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.

**Additional Restriction for Lot-Density Basin(s):**

(Rear of Lots 1-5, 19-48, and 60-71)

9. In the case of the lots within CAMA's regulated Area of Environmental Concern, where the Division calculates a different maximum lot BUA than is shown herein, the governing maximum lot BUA shall be the most restrictive of the two amounts.
10. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings is strictly prohibited by any persons.

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

#### Section 14.2 STORMWATER PERMITTING.

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

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed by its proper officers and its corporate seal to be affixed thereto on November 21, 2024.

**Clayton Properties Group, Inc.**  
A Tennessee corporation

By: Tammy Spivey  
Name: Tammy Spivey  
Its: Asst. Secretary

New Hanover County, State of North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Tammy Spivey, as Asst. Secretary of Clayton Properties Group, Inc.

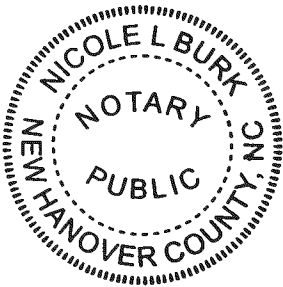
Date: 11/21/24

My Commission Expires:

3/24/2029

Notary Public Nicole L Burk  
Print Name: Nicole L Burk

[Affix Notary Stamp or Seal below]



## **EXHIBIT A: DESCRIPTION OF REAL ESTATE**

ALL AND SINGULAR, those certain pieces, parcels or lots of land shown as Lots 1-18, inclusive, Lots 67-71, inclusive, and Lots 81-97, inclusive, Open Space – Lot A, Open Space – Lot B, and Open Space – Lot C, and those certain private rights-of-way shown as “Foundry Drive (50’ Private Right-of-Way)” and “Heart Pine Avenue (50’ Private Right-of-Way)” on that certain plat prepared by ESP Associates, Inc. and entitled “Subdivision Plat for Indigo at Abbey Preserve Phase One”, dated October 28, 2024, and recorded November 5, 2024, in Map Book 75 at Pages 130-131, Register of Deeds of Pender County, North Carolina

**EXHIBIT B: ARTICLES OF INCORPORATION**

(See attached)

State of North Carolina  
Department of the Secretary of State

ARTICLES OF INCORPORATION  
NONPROFIT CORPORATION

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

1. The name of the nonprofit corporation is: Indigo at Abbey Preserve Homeowners' Association, Inc.

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

3. The name of the initial registered agent is: Scott Bowser

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

Number and Street: 211 Racine Drive, Suite 101

City: Wilmington State: NC Zip Code: 28403-8842 County: New Hanover

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

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

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

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

Name	Address
<u>Kara Keith</u>	<u>1000 29th Avenue North Myrtle Beach SC, 29577-3171</u> <u>United States</u>
_____	_____
_____	_____

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

a.  The corporation will have members.

b.  The corporation will not have members.

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

8.  Attached are provisions regarding the limitation of activities of the corporation.

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

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

Principal Office Telephone Number: (910) 250-5238 x324

Number and Street: 211 Racine Drive, Suite 101

City: Wilmington State: NC Zip Code: 28403-8842 County: New Hanover

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

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

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

11. Principal Office Email Address: Privacy Redaction

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

Name	Address	Title

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

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

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

This is the 8th day of July, 2024.

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

Kara Keith

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

Kara Keith Incorporator

\_\_\_\_\_  
*Type or print Incorporator’s name and title, if any*

NOTES:

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

**Item 7: The Dissolution Clause**

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

**EXHIBIT C: BY-LAWS OF INDIGO AT ABBEY PRESERVE HOMEOWNERS'  
ASSOCIATION, INC.**

**ARTICLE I: NAME, PRINCIPAL OFFICE AND DEFINITIONS**

Section 1.        Name. The name of the Association shall be Indigo at Abbey Preserve Homeowners' Association, Inc. (hereinafter sometimes referred to as the "Association").

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

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

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

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

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

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

Section 1.        Membership. The Association shall have three (3) class of membership, Class "A", Class "B" and Class "C" as more fully set forth in Article III, Section 3.2 of the Declaration.

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

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

Section 4.        Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a

quorum of the Board of Directors or upon a petition signed by Voting Members representing at least sixty (60%) percent of the total votes of the Association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ARTICLE III: BOARD OF DIRECTORS NUMBERS, POWERS, MEETINGS

#### A. Composition and Selection.

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

President	Nicole Burk	211 Racine Drive, Suite 101, Wilmington, NC 28403
Vice President	Tammy Spivey	211 Racine Drive, Suite 101, Wilmington, NC 28403
Secretary	Bryan O’Connell	211 Racine Drive, Suite 101, Wilmington, NC 28403
Treasurer	Christina Hobbs	211 Racine Drive, Suite 101, Wilmington, NC 28403

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

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

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

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

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

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

Section 5. Nomination of Directors. Except with respect to Directors selected by the Class “B” Member, nominations for election to the Board of Directors shall be made by a nominating committee (the

“Nominating Committee”). The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association.

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

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

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

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

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

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

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

## B. Meetings.

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

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

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

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

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

Section 14. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting until such time and place as they may determine. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

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

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

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

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

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

#### C. Powers and Duties.

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

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

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

- a. preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;
- b. making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Lot's proportionate share of the Common Expenses shall be payable in equal monthly installments, or as determined by the Board of Directors;

- c. providing for the operation, care, upkeep, and maintenance of all of the Common Areas;
- d. designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- e. collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the Directors' best business judgment, in depositories other than banks;
- f. making and amending rules and regulations;
- g. opening of bank accounts on behalf of the Association and designating the signatories required;
- h. making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;
- i. enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- j. obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- k. paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;
- l. keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and Lenders, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting principles;
- m. making available to any prospective purchaser of a Lot, any Owner of a Lot, any first Lender, and the holders, insurers, and guarantors of a first Deed of Trust on any Lot, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Lot, and all other books, records, and financial statements of the Association;
- n. permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the properties; and
- o. Consenting to and agreeing to matters related to or associated with that certain Cost Share and Maintenance Agreement with Pender County.

Section 20.      Management Agent.

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

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

- a.      accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- b.      accounting and controls shall conform to generally accepted accounting principles;
- c.      cash accounts of the Association shall not be commingled with any other accounts;
- d.      no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise unless it benefits the Association;
- e.      any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;
- f.      commencing at the end of the month in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:
  - i.      an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
  - ii.     a variance report reflecting the status of all Association ledger accounts in an "actual" versus "approved" budget format;
  - iii.    a balance sheet as of the last day of the preceding period; and
  - iv.    a delinquency report listing all Owners who are delinquent in paying the assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (A monthly installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of each month unless otherwise determined by the Board of Directors); and

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

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

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

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

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

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

- a. Notice. Prior to imposition of any sanction hereunder, except the suspension of voting rights for nonpayment of assessments, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the

proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

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

#### ARTICLE IV: OFFICERS

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

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

President	Nicole Burk	211 Racine Drive, Suite 101, Wilmington, NC 28403
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Vice President            Tammy Spivey        211 Racine Drive, Suite 101, Wilmington, NC 28403  
Secretary                Bryan O'Connell     211 Racine Drive, Suite 101, Wilmington, NC 28403  
Treasurer                Christina Hobbs     211 Racine Drive, Suite 101, Wilmington, NC 28403

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

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

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

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

#### ARTICLE V: COMMITTEES

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

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

#### ARTICLE VI: MISCELLANEOUS

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

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

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

Section 4.     Books and Records.

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

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

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

Section 6.     Amendment. Prior to the termination of the Declarant Control Period, Declarant may unilaterally amend these By-Laws at any time, and from time to time, if such amendment is necessary (i) to bring any provision into compliance with any applicable government statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Deed of Trust loans on the Lots. For so long as Declarant owns any Lot or Dwelling Unit (as defined in the Declaration) within the Property, Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon the rights of the Members. Thereafter and otherwise, but subject to the provisions hereinafter provided, these By-Laws may be amended only by the affirmative vote (in person or by alternate) or written consent of Voting Members representing two-thirds (2/3) of the total votes of the

Association, including two-thirds (2/3) of the votes of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Further, no amendment of any provision reserving a right specifically in favor of the Declarant may be amended without the Declarant's express consent. No amendment shall be effective until recorded in the public records of Pender County, North Carolina.

## ARTICLE VII: LIABILITY AND INDEMNIFICATION

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

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

- a. To the extent that an individual has been successful on the merits or otherwise in the defense of any action, suit, or proceeding referred to in this Section 2, or in the defense of any claim, issue or matter therein, the individual shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred in connection therewith.

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

[Signature page follows]

IN WITNESS WHEREOF, the undersigned Indigo at Abbey Preserve Homeowners' Association, Inc. has caused this instrument to be executed to be effective as of Nov. 21, 2024.

INDIGO AT ABBEY PRESERVE HOMEOWNERS' ASSOCIATION, INC.

By: Tammy Spivey  
Name: Tammy Spivey  
Its: Vice President