

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
CYPRESS GROVE TOWNHOMES**

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**STATE OF NORTH CAROLINA  
COUNTY OF PENDER**

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CYPRESS GROVE TOWNHOMES** (herein "Declaration"), is made and entered into on this the 9th day of January, 2020 by **CYPRESS GROVE PARTNERS, LLC**, a North Carolina limited liability company with a principal office address of 2030 Eastwood Road, Suite 5, Wilmington, NC 28403 ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Pender County, North Carolina, known as **CYPRESS GROVE TOWNHOMES** (referred to herein as "Cypress Grove") which consists or will consist of townhomes or duplex-style dwellings, which real property is more particularly described by Exhibit A, attached hereto and incorporated by reference herein (the "Property"); and

WHEREAS, Declarant desires to subject the Property to these protective covenants and form an association of owners within Cypress Grove to provide, among other things, the preservation of the property values and the desirability and attractiveness of the real property in Cypress Grove, and to provide for the establishment and the continued maintenance of the Common Area and the Lawn Maintenance and Landscape Elements (as defined below) in Cypress Grove; and

NOW THEREFORE, Declarant declares that the Property shall be held, sold, and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants, and conditions. These protective covenants shall be binding on and shall inure to the benefit of all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, and assigns.

**ARTICLE I**  
**Definitions**

The definitions of terms as set out in the Maintenance Agreement (as defined herein), except as specifically

modified or changed by this Declaration, are adopted and incorporated herein by reference.

The following additional definitions shall apply for purposes of this Declaration:

"Association" shall mean and refer to Cypress Grove Townhomes Homeowners Association, Inc., a North Carolina non-profit corporation with a principal office address of 2030 Eastwood Road, Suite 5, Wilmington, NC 28403, New Hanover County, North Carolina, and its successors and assigns.

"Additional Property" shall mean and refer to any lands, in addition to the above described Property, annexed to and made a part of the Planned Community, whether such lands are now owned or hereafter acquired by Declarant or others, and whether developed by Declarant or others.

"Board of Directors" or "Board" shall be used interchangeably and shall mean the body responsible for administration of the Association.

"Common Area" shall mean all real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the owners of Cypress Grove, including without limitation, private roads and streets pedestrian easements, open spaces, stormwater management areas and as shown on the subdivision plat described in Exhibit A (the, "Plat") as described in this Declaration or Maintenance Agreement.

"Maintenance Agreement" shall mean that certain Drainage Easement and Maintenance Agreement recorded in Book 4663, Page 1203 of the Pender County Registry and all of the applicable easements, restrictions, provisions, declarations, rights, powers, covenants, conditions and obligations related to the Property and Stormwater Management Area (as defined herein), thereby imposed and contained therein, which shall be binding upon the Owners, their successors and assigns, and all other persons acquiring any interest in the Property, or any portion thereof, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Owners' respective properties and their respective successors and assigns. All of the applicable provisions of this Maintenance Agreement shall constitute covenants running with the land.

"Maintenance Agreement Common Area" shall mean all real and personal property, including but not limited to the Drainage Easements, CGP Stormwater Management Area and other easements, which are held in for the common use and enjoyment of the owners of Cypress Grove and others, as provided in the Maintenance Agreement.

"Stormwater Management Area" shall mean the CGP Stormwater Management Area as provided in the Maintenance Agreement and such other stormwater management areas noted on the Plat.

"Common Expenses" shall mean any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the Bylaws, and N.C.G.S. § 47F-1-103(5).

"Cypress Grove Landscape Guidelines" shall mean the guidelines and standards for design, landscaping, care, and grooming of Lawn Maintenance and Landscape Elements, as said guidelines and standards may be amended from time to time. The initial Cypress Grove Landscape Guidelines shall be prepared by the Declarant, who shall have the sole and full authority to amend the same during the Declarant Control Period (as said period is defined in Article IV). After the Declarant Control Period, the Association may amend

Cypress Grove Landscape Guidelines if sixty-seven percent (67%) of the then Lot Owners agree. The Declarant or, after the Declarant Control Period, the Association, shall make the Cypress Grove Landscape Guidelines available to Owners but shall not be required to record the same.

"Lawn Maintenance and Landscape Elements" shall mean all real and personal property, including easements, which the Declarant or the Association may maintain within the Property from time to time. This term shall include the care and grooming of all vegetative elements existing on each Lot beginning at the time said Lot is conveyed from Declarant or a builder to a Member of Association.

"Limited Common Area" shall mean all real and personal property designated under this Declaration, as the same may be amended from time to time, located within the Common Area for the exclusive use or primary benefit of Owners and occupants within Cypress Grove, as more particularly described in Article V of this Declaration. Limited Common Areas may be designated in this Declaration or may be shown and designated on any maps of Cypress Grove which are or may be recorded in the Pender County Registry; or may be designated in any Supplemental Declaration annexing Additional Property. The Limited Common Area within Cypress Grove allocated to each Lot, and all costs associated with the maintenance, repair, replacement and insurance thereof shall be a Common Expense for Cypress Grove owners.

"Lot" shall mean any portion of the Property, whether improved or unimproved, designated for separate ownership by an Owner and shown on the Plat. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon.

"Planned Community" shall mean and refer to the Property plus any Additional Property made a part of the Planned Community by the exercise of any Special Declarant Right.

"Cypress Grove Governing Documents" shall mean the Declaration and any amendments and supplemental declarations thereto, the By-Laws and Articles of Incorporation of the Association, the Architectural Design Standards, the Restrictions and Rules, resolutions by the Association Board of Directors, and recorded plats of Cypress Grove, as any one or more of which may be amended from time to time.

"Member" shall mean a person subject to membership in Association pursuant to Article IV.

"Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding those parties who have an interest in a Lot merely as security for the performance of an obligation.

"Unit" shall mean an attached or semi-attached residential townhouse constructed upon a Lot.

## **ARTICLE II** **Maintenance Agreement, Use Guidelines and Restrictions**

Section 1. Maintenance Agreement. Declarant hereby adopts by reference, as if fully set forth herein, all provisions of the Maintenance Agreement, and any supplements or amendments thereto presently existing or hereafter adopted.

Section 2. Plan of Development, Applicability, Effect.

A. Declarant has created the Planned Community as a residential development and, in furtherance of its and every other Owner's interest, has established a general plan of development for the Planned Community. Accordingly, the Property is subject to guidelines and restrictions governing land use, individual conduct, and uses of or actions upon the Properties as provided in this Article II. These protective covenants establish affirmative and negative covenants, easements, and restrictions (the "Use Guidelines and Restrictions").

B. All provisions of these protective covenants and of any Association rules shall also apply to all occupants, lessees, guests and invitees of any Lot. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of these protective covenants, the By-Laws, and the rules of the Association.

Section 3. Rules and Regulations. Subject to the terms of this Article II, upon a majority vote of the Board, the Association may, from time to time adopt, amend and repeal Rules and Regulations with respect to all aspects of the Association's rights, activities and duties under this Declaration. The Rules and Regulations may, without limitation, govern use of the Planned Community, including prohibiting, restricting or imposing charges for the use of any portion of the Planned Community by Owners, residents or others, interpret this Declaration or establish procedures for operation of the Association or the administration of this Declaration; provided, however, that the Rules and Regulations shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be maintained in the office of the Association and shall be available to each Owner upon request.

Section 4. Owners' Acknowledgment.

A. All Owners and all the Property is subject to the Use Guidelines and Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board may add, delete, modify, create exceptions to, or amend the Use Guidelines and Restrictions in accordance with Section 2.

B. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by these provisions, agrees to be bound thereby, and that the Use Guidelines and Restrictions and rules may change from time to time.

Section 5. Rights of Owners. Except as may be specifically set forth in Section 6, the Board may not adopt any rule in violation of the following restriction: No rules shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, that block the views from other Lots, or that create an unreasonable source of annoyance, or that create a nuisance.

Section 6. Use Guidelines and Restrictions.

A. General. The Properties shall be used only for residential and related purposes (which may include, without limitation, offices for any property manager retained by the Association, business or sales offices for the Declarant or the Association, and certain recreational uses ancillary to home ownership or

as permitted in the Common Areas), except as otherwise provided herein. No commercial use shall be permitted on any Lot except in accordance with Section 6(L).

B. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, kept or maintained on any Lot or in any dwelling except a limited number of domestic household pets, which limit may be set by the Board. Domestic household pets may not be raised, bred, or kept for any commercial purpose. Pets must be leashed at all times when off Owner's Lot and droppings must be immediately removed. Fines assessed by the Association shall become an Individual Assessment in accordance with Article X. All parties are hereby notified that, in the event any dog kept or maintained on a Lot or in any dwelling on the Properties barks excessively, continuously or in a manner that constitutes a nuisance, the Board may require such dog to wear a collar designed to reduce or control such excessive barking (provided that such action shall in no event limit any other rights or remedies for such situation that may be available to the Board or to any other parties at law or in equity).

C. Placement of Outdoor Clothes Drying Structure. No outdoor poles, clotheslines or similar equipment shall be erected or located on any Lot.

D. Offensive and Illegal Activities. No immoral, improper, illegal, noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof tending to cause embarrassment, discomfort, annoyance or nuisance to the Association, the Declarant or any Owners. There shall not be maintained any plants or animals, odors, fumes, or device or anything of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the Owners thereof. All laws, orders, rules, regulations, ordinances or requirements of any government agency having jurisdiction thereof, relating to any parties of the property, shall be complied with, by or at the sole expense of the Owner or of the Association, whichever shall have the obligation to maintain or repair such portion of the property.

E. Parking. Parking of vehicles on any street in the Property shall be allowed only in accordance with the policy determined by the Board of Directors. No truck or other vehicle in excess of a three-quarter (3/4) ton load capacity, boat, vessel, motorboat, camper, trailer, motor or mobile home, or similar type vehicle or apparatus shall be parked or kept overnight or longer, on any street or on any Lot unless it is stored in an enclosed garage or in such a manner as to not be visible to the Owners of other Lots or the users of a street or Common Area (it being agreed that if any screening or other improvements or landscaping used for the purpose of preventing visibility of such items shall be subject to the architectural review provisions of these protective covenants). All tools or other materials stored in vehicles for overnight parking shall be kept out of sight. No vehicles or equipment which are unsightly in appearance as determined by the Board of Directors shall be allowed.

F. Repair or Removal of Buildings. Any dwelling or improvement on any Lot that is destroyed in whole or in part by fire or other casualty shall be either rebuilt or torn down and all debris removed and the Lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot longer than three (3) months. If a replacement Lot is to be constructed, the replacement Lot must be approved by the Committee in accordance with Article II.

G. Outside Burning. No outside burning shall be permitted except as may be approved by the Board in advance (provided that in no event shall burning be permitted except in compliance with all applicable governmental regulations).

H. Signs. For as long as the Declarant, its successors or assigns, or Stevens Building Company, or any entity that has common principals with Declarant or Stevens Building Company

("Stevens") owns any land within the Planned Community, no "For Sale" signs shall be allowed on, displayed from or visible from any Lot, including but not limited to, around, in, or affixed to any structure, trees, or other landscape located thereon. Declarant, its successors or assigns, and Stevens, has the absolute right to remove any such signage, and shall not be liable to the sign owner, or the Lot Owner for trespass, conversion, destruction, or any other legal recourse. Subject to the foregoing, and further subject to applicable law, no signs, billboards, political signs or other advertising structure(s) of any kind shall be erected on any Lot or displayed to the public on any Lot or in any structure, subject to these restrictions without prior written approval of the Committee. The Committee may approve or reject any request for signage, or may approve with conditions, including size limits. This covenant shall not apply to signs erected by the Declarant or Stevens, including signs used to identify and advertise the Property as a whole. Declarant, Stevens or Committee has the right to enter upon the Lot and remove any unapproved sign. Any signs displayed within a structure shall be removed by the Owner immediately upon notice thereof. Without limiting the foregoing, the Committee shall issue guidelines from time to time outlining the Planned Community's policy for the posting of "for sale" signs and similar temporary signs by or upon any Lot (which policy shall include the permitted dimensions and appearance of such signs and may even prohibit such signs altogether).

I. Hunting and Fishing. No hunting or discharge of firearms within the subdivision is permitted. The Association, through its Board of Directors, reserves the right to control or remove animals (including, without limitation, the authorization of bow hunting to reduce or eliminate nuisance animals) subject to rules and restrictions to be determined by the Board, Fishing shall be permitted only in locations designated by the Board from time to time and shall be subject to reasonable restrictions imposed by the Board.

J. Garbage. Garbage and trash shall be disposed by Owners in accordance with the rules and regulations of the Association. All trash receptacles and garbage cans shall be screened so as not to be visible by the Owners of other Lots or the users of any street or Common Area. All such screening shall be approved by the Committee. For the safety of the community and to decrease congestion and wear and tear on the Common Areas, the Association may impose a requirement that a single refuse collection company shall be used by all Lot Owners for trash and garbage removal in the Planned Community.

K. Antennas. No outside antennas or satellite dishes shall be erected on any Lot or structure unless and until permission for the same has been granted by the Committee. The design and location of the dish shall be approved by the Committee.

L. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by the Board subject to any conditions imposed by the Board:

(i) Activities which materially disturb or destroy the vegetation, wildlife, water or air quality within the Property or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(ii) Any Business or Trade, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the activity does not involve visitation of the Lot by clients, employees, agents, customers, suppliers, or other business invitees, delivery services, or door-to-door solicitation of residents of the Properties; and (c) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

(iii) Nothing shall be kept, and no activity shall be carried on in any building, structure or home or on the Common Area which will increase the rate of insurance, applicable to residential use, for the property or the contents thereof. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his home or on the Common Area which will result in the cancellation of insurance on any portion of the property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Area.

M. Property Damage. Owners shall be responsible for any damage done to any streets, roadways, access ways, curbing, street gutters, sidewalks, Common Areas or property of other Owners within the Properties which may be caused by any Owner, his agents, contractor or its subcontractor lessees, employees, guests, licensees or invitees. The Association shall have the authority to assess any Owner for such damage and such charge shall be an Individual Assessment against the Owner and his Lot(s) and may be enforced in accordance with the provisions of Article X herein.

N. Junk Vehicles. No stripped, partially wrecked, junk motor vehicle, or part thereof, or any motor vehicle not displaying a current valid inspection sticker shall be permitted to be parked or kept on any Lot.

O. Fuel Tanks. No fuel tanks or similar storage receptacles may be exposed to view. The placement of any such receptacles may be approved by the Committee or Declarant and may only be located within the main dwelling house, within an accessory building, within a screened area, or buried underground.

P. Mailboxes. All Lots will be served by mailbox banks or kiosks located in the Common Area and provided by Stevens. No mailbox shall be installed or allowed to remain on any Lot.

Q. Outdoor Objects. No outdoor statuary, flags or other decorative objects may be placed on any Lot without the written approval of the Committee. The American Flag no larger than 3 feet x 5 feet may be flown on a pole no longer than 5 foot 6 inches from a pole holder attached to the home in an approved location which can be reached by hand from the ground below so as to be easily installed and removed. Any flags will be displayed in accordance with traditional rules and regulations governing the flying and display of the American Flag.

R. Alteration of Common Area. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Area except at the direction of and with the express written consent of the Committee.

S. Use of Common Areas. The Common Areas shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the homes, subject to any Rules or Regulations that may be adopted by the Association hereunder or pursuant to its By-Laws.

T. Storage of Personal Property. All lawn mowers, bicycles, toys, grills and other similar objects must be stored when not in use so as not to be visible by the Owners of other Lots or the users of any street or Common Area.

U. Exterior Features and Structures. All exterior storage areas, laundry facilities, utility areas, service yards or areas and carports are to be screened from view from streets and adjacent properties by an enclosure, fence, wall or natural landscape materials. Any screening shall be subject to the architectural review requirements of these Protective Covenants.

V. Road Use. The roads are to be used by vehicles or pedestrians for the purposes of transportation. At no time shall any vehicle exceed the speed limit as determined by the Association or the applicable governmental authority. No permanent, frequent, or long-term parking is permitted along or on roads or streets. The Association is entitled to adopt reasonable rules and regulations regarding the supervision, maintenance, control, regulation and use of the roads and promenades, and to enforce the same in any lawful manner which may include, but not be limited to, the imposition of fines for violations thereof, which fines shall be Individual Assessments and may be enforced in accordance with the provisions of Article X.

W. Declarant's Activities. (1) This subsection 6 shall not apply to any activity conducted by the Declarant and/or its successors and assigns with respect to its development and sale of the Property or any commercial activities of the Declarant and/or its successors and assigns, including any sales office maintained by Declarant and/or its successors and assigns, and (2) Declarant shall be specifically authorized to rent or lease any Lot which it owns or manages for other Owners, and to maintain model Lots or sales offices in any Lot which it owns or leases.

Section 7. Stormwater Runoff Rules. The covenants in this Section 7 are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 07-226 (the "Permit"), as issued by the North Carolina Division of Energy, Mineral and Land Resources ("Division") under 15A NCAC 02H.1000.

The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Permit.

(a) The covenants under this Section 7 are to run with the land and be binding on all persons and parties claiming under them.

(b) The covenants under this Section 7 pertaining to stormwater regulations may not be altered or rescinded without consent of the Division.

(c) Alteration of the drainage as shown on the plans for the Subdivision approved by Division may not take place without the concurrence of Division.

(d) The maximum built upon area per lot is **one thousand seven hundred (1,700) square feet**. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the street pavement or sidewalk. The maximum allowable built-upon area shall not be exceeded on any lot until the Permit is modified to ensure compliance with stormwater rules. Built-upon area has the same meaning as G. S. 143-214.7, as amended by Session Law 2017-10.

(e) A 50-foot-wide vegetated setback must be provided and maintained adjacent to all surface waters in accordance with 15A NCAC 02H.1003(4).

(f) Lots within CAMA's Area of Environmental Concern may have the permitted built-upon area reduced due to CAMA jurisdiction within the AEC.

(g) All runoff on the lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales and directing them into the pond or street. Lots that will naturally drain into the system are not required to provide these measures.

(h) Built-upon area in excess of the permitted amount will require a permit modification.

(i) Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of the stormwater rules is subject to enforcement procedures as set forth in N.C.G.S. § 143 Article 21.

(j) Declarant hereby reserves the right to impose additional restrictions upon the Properties as and to the extent required by the terms of the Permit. Further, Declarant may re-allocate any unused BUA for any Lot to any other Property within Cypress Grove, by modifying the Stormwater Permit. Such additional restrictions, or permitted reallocation of BUA, may be imposed or established by Declarant, by the recording of an Amendment to the Declaration, and no joinder or consent of the Association or any Owner or other Person shall be required.

### **ARTICLE III** **Architectural Design Standards**

#### **Section 1. General.**

A. No structures, buildings, improvements or construction, which shall include within its definition, clearing, grading, tree removal, excavation and other site work, shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein (including, without limitation, any change of color) be made to any Lot, except in compliance with this Article and the Architectural Design Guidelines, nor shall any such work commence until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Committee according to the provisions of Section 2. Structures, buildings and improvements shall include, but not be limited to, any dwelling, garage, fence, wall, sidewalk, hedge, tree, mass planting, change in grade or slope, drainage pipe, drainage canal, ditch, swale, catch basin, swimming pool, treehouse, playhouse, sign, flag pole, antenna, satellite dish, exterior illumination, monument or marker, outdoor statuary, exterior lights, security lights, storm door, well utility facility, patio, deck, screening for outdoor trash cans or other purposes, sprinkler or irrigation system, driveway, outdoor decorative objects, shrubbery or landscaping.

B. Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval. Approval of the Committee shall, however, be required to repaint the exterior of a structure even in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

C. This Article shall not apply to the activities of the Declarant and/or its successor and assign, nor to improvements to the Common Area by or on behalf of the Association.

D. During the Class "B" Control Period, this Article may not be amended without the Declarant's written consent.

#### **Section 2. Architectural Review.**

A. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the Committee as described in subsection (B) below. The members of the Committee need not be Members of the

Association and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid prior to review.

B. Architectural Review Committee (herein "Committee"). The Committee shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all construction on any portion of the Properties. For as long as Declarant and/or its successors and assigns own any Lot within the Property, the Declarant retains the right to appoint all members of the Committee who shall serve at the Declarant's discretion. After the sale of the last Lot owned by Declarant and/or its successors and assigns to a third party, the Board shall be entitled to appoint the members of the Committee, who shall serve and may be removed in the Board's discretion.

Section 3. Guidelines and Procedures. The Declarant shall prepare the initial Design Guidelines and application and review procedures (the "Design Guidelines") which shall apply to all construction activities within the Property. The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, and intended use. The Committee shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them subject to the approval of the Board of Directors. The Committee shall make the Design Guidelines available to Owners who seek to engage in development or construction on their Lot and all such Persons shall conduct their activities in accordance with such Design Guidelines.

Section 4. Submission of Plans and Specifications.

A. No construction or improvements, as specified in Section 1(A), shall be commenced, erected, placed or maintained on any Lot, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening shall have been submitted to and approved in writing by the Committee. The Design Guidelines shall set forth the procedure for submission of the Plans. A reasonable fee for the review of said plans may be required by the Committee, in which case such fee shall be submitted along with said Plans and any other supporting documents required by Committee. The Board or the Committee may also require an additional security deposit to be posted prior to the commencement of any construction or work, which sum shall be used to collect any fees, fines or penalties incurred during construction or work. If such a security deposit is required, any portion of the security deposit remaining upon the completion of construction shall be returned to the Owner.

B. In reviewing each submission, the Committee may consider (but is not required to consider or limited to considering) visual aesthetics, natural platforms and finish grade elevations, harmony of external design with surrounding structures and environment, and location in the relation to surrounding structures and plant life. The Committee may require relocation of native plants within the construction site as a condition of approval of any submission. Location of any driveways shall be subject to the approval of the Committee.

C. The Association shall have the right to refuse to approve any plans and specifications or grading plans which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons. In so approving such plans, specifications and grading plans, the Association shall consider the suitability of the proposed building, improvements, structure, or landscaping and the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, and

the effect thereof on the adjacent or neighboring property.

D. No bulldozing or clearing of trees or excavation of lakes or ponds shall be commenced until the plans, specifications and grading plans showing the nature, kind, shape and location of work to be done shall have been submitted to and approved in writing by the Association and a copy thereof, as finally approved, filed permanently with the Association.

E. The Committee shall, within forty-five (45) days after receipt of each submission of the Plans, advise the party submitting the same in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with these protective covenants and/or the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections. In the event the Committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have given at the time of delivery.

F. If construction does not commence on a project for which Plans have been approved within two (2) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans for reconsideration.

G. Once construction has been initiated on a Lot, the Owner thereof must complete such construction within twelve (12) months. If an Owner does not comply with such schedule, then Declarant, the Board and the Association shall each have the right (but not the obligation) to complete such construction on Owner's behalf and at such Owner's expense. In the event the Declarant, the Board or the Association exercises the right provided in the immediately preceding sentence, then Declarant, the Board and/or the Association (as the case may be) shall be entitled to collect from such Owner, in addition to a reimbursement of all costs expended in the completion of construction of the Lot, an administrative fee for such work, which fee shall be equal to twenty percent (20%) of the costs incurred by such party in completing the work. Any and all of the foregoing costs and fees that may be incurred by or payable to Declarant, the Board and/or the Association shall be a charge and continuing lien upon such Lot until paid, and Declarant, the Board and/or the Association may bring an action against such Owner, or foreclose the lien against the property in the same manner as provided in North Carolina for the foreclosure of deeds of trust, both, and, in either event, interest, costs and reasonable attorney's fees of any such action shall be added to the amount payable to Declarant, the Board and/or the Association.

Section 5. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Committee will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 6. Variance. The Committee may authorize in its discretion reasonable variances or adjustments from compliance with any of its guidelines and procedures in order to alleviate practical difficulties and hardship in their enforcement and operation. Such variances may only be granted, however, when unique circumstances dictate, and no variance shall (a) be effective unless in writing; or (b) stop the Committee from denying a variance in other circumstances. Any such variances shall not violate the spirit or the intent

of this document to create a subdivision of Lots owned in fee by various persons with each such Owner having an easement upon areas owned by the Association.

Section 7. Limitation of Liability. The standards and procedures established or authorized by this Article is intended as a mechanism for maintaining and enhancing the overall aesthetics of Cypress Grove. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring Lot owners. Neither the Declarant, the Association, the Board, nor the Committee, shall be held liable for any injury, damages, or loss arising out of the review and approval of any application, including, but not limited to, the granting of a variance, the manner or quality of construction, or defects in any plans or specifications, or deficiencies in kind or quality of materials used, or any soil conditions, drainage or site work propose or approved, or for ensuring compliance with building codes and other governmental requirements.

Section 8. Enforcement.

A. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required within thirty (30) days of being notified, then Declarant, the Board and the Association shall each have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed; provided however, if the violation is deemed by the Board or Declarant, in their sole discretion, to be a safety hazard or require immediate remediation, then the Board or Declarant may immediately take the actions authorized hereunder to remove the violation. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Lot's Owner and the benefited Lot and collected as an Individual Assessment. In the event the Declarant, the Board and/or the Association exercises any right provided above in this Section 8(A), then Declarant, the Board and/or the Association (as the case may be) shall be entitled to collect from the relevant Owner, in addition to a reimbursement of all costs expended in the removal of the violation and/or the restoration of the property, an administrative fee for such work, which fee shall be equal to thirty percent (30%) of the costs incurred by such party in performing the work.

B. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties. In such event, none of the Association, its officers, or its directors shall be held liable to any Person for exercising the rights granted by this paragraph.

C. The Association shall have the authority to establish fines for violations of this Article and the Design Guidelines, including fines for continuing violation & the fine amounts may be deducted from any bond posted. If the fines are not paid, the Association may establish an Individual Assessment in accordance with the provisions of Article X.

D. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Committee.

Section 9. Architectural Change Committee. At the discretion of the Declarant and/or its successors and assigns (or, if after the expiration of the Class "B" Control Period, at the discretion of the Association), either Declarant or the Association (as the case may be) shall have the option, but not the obligation, to establish an Architectural Change Committee to review minor changes or renovations to improvements previously approved by the Committee. If the Declarant or the Association elects to establish such an Architectural Change Committee, the Board shall establish guidelines regarding the operation and jurisdiction of such committee and shall appoint its members, each of whom shall serve and may be removed in the Board's discretion. Additionally, during the Class "B" Control Period, the Declarant shall have the right to remove and replace any member of the Architectural Change Committee.

#### ARTICLE IV Membership and Voting

Section 1. Membership and Voting Rights. Every Owner of a Lot which is subject to this Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Such membership is not intended to apply to those persons or entities holding an interest in any Lot merely as security for the performance of an obligation to pay money, e.g., mortgages or deeds of trust; however, if such secured party should realize upon its security and become the fee owner of a tract, it and its assigns will be subject to all of the requirements and limitations imposed in these protective covenants on Owners of tracts within Cypress Grove, including those provisions with respect to payment of Assessments.

Section 2. Membership Classes. The Association shall initially have two classes of voting membership (additional classes of membership may be added to the Association by Declarant in the event that Additional Property is annexed to Cypress Grove):

Class "A". Class A Members shall be all Lot Owners except the Class "B" Member, if any.

Class "B". The sole Class "B" Member shall be the Declarant and/or its successors and assigns.

Section 3. Voting Rights. The voting rights of each class of membership shall be as follows:

A. The Class A Members shall be entitled to one vote for each Lot owned within Cypress Grove. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited.

B. The Class B Member shall be entitled to fifteen (15) votes for each platted Lot within Cypress Grove. The Class B Membership shall cease and be converted to a Class A Membership when Declarant completes construction upon and conveys all Lots or upon Declarant's voluntary surrender of all Class B Membership.

The period during which there is Class B Membership is sometimes referred to herein as the "Declarant Control Period." During the Declarant Control Period, the Declarant shall have the rights, among others, to designate and select the Board and the right to remove any person or persons designated and selected by the Declarant to serve on the Board, and to replace them for the remainder of the term of any person designated and selected by the Declarant to serve on the Board who may resign, die, or be removed by the Declarant.

Section 4. Rights of the Association. The Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws of the Association, the Planned Community Act, or Chapter 55A of the North Carolina General Statutes, or reasonably implied from or reasonably necessary to effectuate any such right or privilege, including but not limited to the right to perform cosmetic maintenance such as mowing and planting of stormwater retention facilities, which facilities adjoin Lots but may not be located within the Property. Except as otherwise specifically provided in this Declaration, the By-Laws or the Articles of Incorporation of the Association, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

**ARTICLE V**  
**Common Areas**

Section 1. Owners' Easements of Enjoyment of Common Area. Every Owner of a Lot shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. the applicable easements, restrictions, provisions, declarations, rights, powers, covenants, conditions and obligations, thereby imposed and contained in the Maintenance Agreement related to the Maintenance Agreement Common Area, the easements herein reserved by Declarant or created in favor of the Association, including, without limitation the easements set forth in Article XI hereof;

B. the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

C. the right of the Association to suspend the voting rights by the Owner(s) of any Lot for any period during which any assessment against such Lot remains unpaid and for any period during which such Lot or any Owner or occupant thereof is in violation of the terms of this Declaration or the published rules and regulations of the Association and for a period not to exceed sixty (60) days after any such violation;

D. the right of the Association to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Areas for such purposes and subject to such conditions as may be agreed to by the Association's Executive Board; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded;

E. the right of the Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes of the Association (including two-thirds of the votes of the Members present at a meeting of the Members held in accordance with the Bylaws of the Association, such vote including at least a majority of the votes of the Members present other than Declarant), to dedicate or transfer fee title to all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, during Declarant's Control Period, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Areas or cause any Lot or any remaining Common Areas to fail to comply with applicable laws, regulations or ordinances;

F. the right of the Association to impose rules and regulations for the use and enjoyment of the Common Areas and improvements thereon, which regulations may further restrict the use of the Common

Areas, and specifically including the right to make permanent and temporary assignments of parking spaces and to establish rules and regulations concerning parking and vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting the Property which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicle's owner, by reasonable fine levied against the vehicle's owner and/or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Executive Board;

G. the right of the Association to borrow money for the purpose of improving the Common Areas and facilities thereon and, with the assent of the Members entitled to cast at least eighty percent (80%) of the votes of the Association (including two-thirds (2/3) of the votes of the Members present at a meeting of the Members held in accordance with the Bylaws of the Association, such vote including at least a majority of the votes of the Members present other than Declarant), mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association); provided, however, during Declarant's Control Period, Declarant must also consent to such action, and further provided that no such mortgage, encumbrance or hypothecation or foreclosure of the lien thereby created shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Areas or cause any Lot or any remaining Common Areas to fail to comply with applicable laws, regulations or ordinances;

H. the right of the Association to convey to Declarant portions of the Common Areas for the purpose of correcting erroneous conveyances of Common Areas or eliminating unintentional encroachments of dwellings or other improvements onto portions of the Common Areas or for the purpose of enhancing the utility of the Common Areas to be retained by the Association; provided, however, no such conveyance shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Areas or cause any Lot or any remaining Common Areas to fail to comply with applicable laws, regulations or ordinances; and

I. the right of the Association to dedicate portions of the Common Areas to any local, state, or federal governmental entity, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association.

Section 2. Owners' Easements of Enjoyment of Limited Common Area. Every Owner of a Lot has to it, as a Limited Common Area, the right and easement of use, access, and enjoyment in and to those portions of any driveways which are located between their Lot and any private roads or streets located within the Common Area which are intended to serve their Unit, as well as the sidewalks and roadways, which rights shall be appurtenant to and shall pass with the respective title to such Lot, subject to the following provisions: a) the Declaration, Bylaws, and rules and regulations; b) any restrictions or limitations in any deed or other instrument conveying any portion of the Limited Common Area to the Association; c) the right of the Board to adopt rules regulating the use and enjoyment of the Limited Common Area and improvements thereon, including but not limited to, rules restricting use of the Limited Common Area to Owners and occupants of Lots and their guests, and rules limiting the number of guests who may use the Limited Common Area; and the right of the Board to establish penalties for any infractions thereof; d) the right of the Board to impose reasonable charges, fines and other sanctions for late payment of assessments or other violations; e) the right of the Association, acting through the Association's Board of Directors, to dedicate or transfer all or part of the Limited Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association; f) the right of the owner of all or part of the Limited Common Area to convey such area to the Association; and g) easements as provided in this Declaration.

**Article VI**  
**Maintenance, Repair and Replacement**

Section 1. Responsibility of the Association - Common Areas. The Association will install, repair, maintain, and replace all portions of the Common Area, specifically including, without limitation, the Stormwater Management Area, all roads, streets, light poles, ponds, mailboxes, and landscaping elements located within the Common Area, except the portions of any Limited Common Area which are required by this Declaration to be maintained, repaired or replaced by Owners to which the Limited Common Area is allocated and except for any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner. The actual and estimated expenses of maintaining, operating, repairing, and replacing the Common Area, including insurance, reasonable reserves, and utilities, as the Board may find necessary and appropriate pursuant to the Declaration for the benefit of the Common Area, shall be assessed at a uniform rate to all Units.

Section 2. Responsibility of the Association - Units. In addition to maintenance of the Common Area, the Association shall provide certain scheduled exterior maintenance upon each Unit, which maintenance may generally include: the scheduled repainting of all exterior building surfaces, including the exterior doors and garage doors; the scheduled replacement of roofs, including the removal & replacement of shingles, flashing, venting and moisture barrier materials; the routine maintenance of Lawn Maintenance and Landscape Elements upon each Lot (as more particularly described in Article VII); and the maintenance of gutters and downspouts. Such exterior maintenance shall not include maintenance of glass surfaces, exterior doors, and window frames (i.e. entire window unit) unless approved by the Board, except the Association shall be responsible for painting exterior doors. With regard to the scheduled roof replacement, the Association shall not be responsible for any repair and/or replacement of the sheathing or underlying wood support members within the roof system. With regard to the scheduled exterior repainting, the Association shall not be responsible for the staining or painting of any horizontal wood surfaces on decks, porches or steps. All such exterior maintenance of Units will be provided by the Association on a schedule and to a scope of work appropriate to meet the reasonable standards determined by the Board, in its discretion, and not on a schedule or to a scope as directed, requested or specified by any specific Owner. The cost of the exterior maintenance upon each Unit will be included in the Base Assessments and shall be levied at a uniform rate against all Units. No Owner may exempt himself or herself from liability for assessments for exterior maintenance provided by the Association. In the event the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, invitees, or licenses, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit is subject. Exterior maintenance services may be modified by the Board as it deems reasonable and appropriate.

Section 3. Responsibility of the Owner. Except for the maintenance provided by the Association as described in Sections 1 and 2 of this Article, each Owner will be responsible for all other required maintenance of the exterior and interior of his or her Lot and Unit, including the fixtures and utilities located in the Unit to the extent current repair shall be necessary in order to avoid damaging other persons, Units, Lots, Common Areas or the Limited Common Areas. All fixtures, equipment, and utilities installed and included in a Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit shall be maintained and kept in repair by the Owner. The Owner at the Owner's expense shall maintain, repair or replace the heating and air-conditioning units (HVAC), air handling units, heat exchanger, heat outlet, enclosures, and mechanical attachments. The Owner shall not allow any action

of work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of any townhome building, or impair any easement or hereditament. Except as otherwise covered by a master policy carried by the Association, the Owner is responsible for a repair resulting from a casualty occurring within or affecting the inside of the Unit. Each Owner shall be responsible for removing all snow, leaves, and debris from all doorsteps or stoops appurtenant to his or her Unit. Notwithstanding anything to the contrary herein and in accordance with terms and conditions provided herein, in the event Lawn Maintenance is no longer provided by the Association, each Owner will be responsible for care and grooming of all vegetative elements existing on each Lot, including but not limited to, any berms, drain ways, swales, ditches or gutters for surface water, in accordance with the Cypress Grove Landscape Guidelines.

Section 4. Association's Right to Maintain Lots and Units. If an Owner of any Lot fails to maintain that Lot and the improvements thereon in accordance with this Article in a manner reasonably satisfactory to the Board, in its sole discretion, the Board shall give written notice to such Owner and, if the necessary maintenance is not completed within thirty (30) days, the Association shall have the right, through its agents, contractors, and employees, to enter upon the Unit of the defaulting Owner and to repair, maintain and restore the Unit and the exterior of the building and other improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance or restoration shall immediately be deemed a Specific Assessment levied by the Association against such Owner and such Owner's Unit, shall become the personal obligation of such Owner and shall become a lien against such Unit enforceable in accordance with Article X. In the event of an emergency (as so deemed by the Board in its reasonable discretion), the Association shall have the right, with or without prior notice to the Owner, to enter any Lot and Unit to make emergency repairs necessary for the proper maintenance and operation of the Property.

Section 5. Maintenance of Private Access Roads. The Association shall be obligated to repair and maintain any private access roads which constitute Common Area hereunder to standards consistent with those required for maintenance of public roads by the North Carolina Department of Transportation. The costs of such repairs and maintenance shall be deemed Common Expenses hereunder.

## **ARTICLE VII**

### **Lawn Maintenance and Landscape Elements**

Section 1. Lawn Maintenance. Lawn maintenance, as more particularly described in the Cypress Grove Landscape Guidelines, will be provided by the Association for all Lots unless Declarant, by a supplemental declaration, excludes any such Lots from lawn maintenance. The cost of lawn maintenance for each Lot will be included in the Base Assessments.

Section 2. Entrance Features and Signs. The Association will maintain all entrance features and signs serving Cypress Grove in accordance with this Declaration. The cost of maintenance of any Cypress Grove entrance features will be assessed by the Association.

## **ARTICLE VIII**

### **Insurance and Reconstruction**

Section 1. Insurance Obtained by the Association. As and to the extent required by the Planned Community Act, the Board, on behalf of the Association, shall obtain and maintain adequate and appropriate insurance in accordance with the following provisions:

A. Property Insurance. The Association shall obtain and maintain at all times a policy or policies of property insurance (ISO special form or its equivalent) covering all buildings located on the Property in an amount not less than one hundred percent (100%) of the replacement cost of the such buildings, including all Units and insurable original interior fixtures, in accordance with the plans and specifications for the original development of the Property, at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the costs of excavation, paving, foundations and footings, with a commercially reasonable deductible. Each policy shall show the Association as the named insured, but shall provide that each Owner is an insured person with respect to his Unit, and that the Association is an insured person with respect to the Common Areas; shall contain clauses providing for waiver of subrogation against any Owner and any Owner's employees or agents; shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and all Mortgagees; shall provide that no act or omission by any Owner will preclude recovery upon such policy; and shall provide that if, at the time of a loss under the policy, there is no other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each policy shall contain an inflation guard endorsement and a construction code endorsement if available. Each policy shall provide that adjustment of loss shall be made by the Association as insurance trustee and shall provide for the issuance of certificates of mortgagee endorsements to all Mortgagees.

B. Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance in such limits as the Association may, from time to time, determine, covering each member of the Board, the property manager, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Areas; provided, however, that in no event shall the limits of such policy ever be less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and all Mortgagees. The Association shall review such limits annually.

C. Other Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain and maintain in effect such other insurance coverages as may be required by any Agency and such other insurance coverages as the Board shall determine from time to time to be desirable, specifically including without limitation, directors and officers liability insurance, fidelity insurance, performance bonds, payment on labor and material bonds, and maintenance bonds.

Section 2. Premiums and Deductibles. Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as an expense of the Association. In the event any Owner fails or refuses to pay assessments needed to pay insurance premiums or deductibles when due, the Association may pay said premium or deductible and levy against the nonpaying Owner a Specific Assessment as set forth in Article X, which shall be an amount due of those amounts, and shall be a lien upon the Unit until paid in full. The amount of the said assessment may include not only the actual cost of the premiums, and any late payment fees, the cost of the deductibles, but also an administrative charge payable to the Association, interest, and any and all attorneys' fees incurred in connection with the collection of such assessments, penalties and fees.

In the event of a loss or damage to a Unit or Common Areas, which may be covered by any

insurance maintained by the Association, the deductible shall be paid as a Common Expense of the Association. In the event of a loss or damage to any part of a Unit or Units which an Owner is obligated to maintain, repair, or replace, which may be covered by any insurance maintained by the Association, the deductible shall be paid by the Owners affected. Whenever a loss or damage occurs to the Common Area and a Unit or multiple Units and such loss or damage may be covered by any insurance maintained by the Association, the deductible shall be paid on a pro rata basis, based on the amount of the covered loss or damage received by the Owners and Association as they are affected. For example: if a covered loss or damage occurs in the total amount of One Hundred Thousand and No/100 Dollars (\$100,000.00), with a Sixty Thousand and No/100 (\$60,000) loss to the Common Area, a Ten Thousand and No/100 Dollars (\$10,000.00) loss to unit "A" and a Thirty Thousand and No/100 Dollars (\$30,000.00) loss to unit "B", the Association shall pay sixty percent (60%) of the deductible as a Common Expense, Unit Owner "A" will pay ten percent (10%) of the deductible, and Unit Owner "B" will pay the remaining thirty percent (30%) of the deductible.

Section 3. General Standards. All insurance policies maintained by the Association under this Article shall comply with the terms of N.C.G.S. §47F-3-113 and shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A or better in *Best's Insurance Guide*. In the event a company with at least such a rating is not available, such insurance is to be obtained from a company with the highest rating available in *Best's Insurance Guide*. Upon request, duplicate originals of all such policies or certificates of insurance shall be furnished to all Owners and Mortgagees.

Section 4. Owners' Insurance. It shall be the responsibility of each Owner, at such Owner's expense, to maintain additional fire and casualty and extended coverage insurance upon the Owner's personal property and any alterations or other improvements made to the Unit, and public liability insurance. Each Owner shall obtain and maintain liability insurance in the amount of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) per occurrence. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Unit as the Owner, in the Owner's sole discretion, shall conclude to be desirable. However, no such insurance coverage obtained by the Owner shall operate to decrease the amount which the Board, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association resulting from insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were an Individual Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner. The Board may require an Owner to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

Section 5. Distribution of Insurance Proceeds. All policies of property insurance procured by the Association shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Association as insurance trustee. The Association shall have exclusive authority to negotiate any and all losses under such policies, and the Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner to adjust all claims arising under such policies and to execute and deliver releases upon the payment of claims. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust of the purposes set forth herein and for the benefit of the

Owners and their Mortgagees in the following shares:

A. Proceeds on account of damage to any improvements in the Common Areas shall be held by the Association and applied in the manner provided in Section 6 below.

B. Proceeds on account of damage to Units shall be held in undivided shares for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Association.

C. In the event a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of that Owner shall be held in trust for the owner and its Mortgagee, as their respective interest may appear.

D. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the manner provided in Section 6 below.

Section 6. Responsibility for Reconstruction or Repair. If any portion of the Property is damaged by perils covered by property insurance maintained by the Association, the Association shall cause such damaged portions to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose, if any, and any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original development of the Property, except as provided to the contrary in N.C.G.S. §47F-3-113(g). In addition, if such damage renders one or more of the then-existing Units on the Property uninhabitable, the Association may, with the affirmative vote of eighty percent (80%) of the votes of the Members and the written approval of the holders of eighty percent (80%) of the mortgages or deeds of trust then in force with respect to the Lots, and with the approval of one hundred percent (100%) of the Owners and Mortgagees of the damaged Units proposed not to be rebuilt, elect not to reconstruct or repair such damaged Units. A meeting shall be called within ninety (90) days after the occurrence of such casualty. Upon any such election, the insurance proceeds attributable to such damage shall be promptly distributed to the Owners whose Units were damaged, or to their Mortgagees in accordance with the terms of the mortgage covering that Lot, in proportion to the reasonable cost of repairing damage to such Units; provided, however, that no Owner shall receive any portion of his share of such proceeds until all liens and encumbrances on his Lot have been paid, released or discharged and any debris resulting from such damage or destruction has been removed from the Property.

If: (a) the proceeds of insurance are not sufficient to repair damage or destruction of any part of the Property by fire or other casualty, or (b) the damage or destruction is caused by any casualty not insured against, or (c) insurance proceeds are not available for repair or reconstruction by reason of the application of deductible clauses of applicable policies, then the repair or reconstruction of any damaged improvements within the Common Areas shall be accomplished promptly by the Association and the extent of such repairs shall be an expense of the Association; and the repair or reconstruction of any improvements contained within any Lot shall be accomplished promptly by the Owner of the affected Lot at that Owner's expense.

Section 7. Procedure for Reconstruction or Repair. In the event of a casualty causing damage to any portion of the Property, the following provisions shall govern and apply:

A. Immediately after a casualty which causes damage to any portion of the Property, the Association shall obtain, or cause the affected Owners to obtain, reliable and detailed estimates of the cost

to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

B. If the proceeds of the casualty insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the professional fees and premiums, if any), one or more special assessments shall be made against all Owners of the affected Lots (with respect to any deficiency in insurance proceeds for damage or destruction to Units or other improvements on Lots) or all Owners (with respect to any deficiency in insurance proceeds for damage or destruction to the Common Areas or the improvements thereon) in sufficient amount to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association; provided, however, that the Association may borrow funds to pay for such costs with the assent of eighty percent (80%) of the members of the Association voting at a meeting duly called for such purpose.

C. The proceeds of the property insurance referred to in Section 1(A) and the sums deposited with the Association from collections of special assessments proceeds of authorized loans, as provided in Section 7(B), shall constitute a construction fund which shall be held by the Association and applied to the payment of the cost of reconstruction and repair of the Property from time to time as the work progresses, but not more frequently than once in any calendar month. The Association shall make such payments upon a certificate dated not more than fifteen (15) days prior to such request, signed by an architect in charge of the work who shall be selected by the Association, certifying that the sum then requested is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and certifying that the sum requested does not exceed the value of the services and materials described in the certificate. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association which may use such excess funds for any purpose not in violation of this Declaration in the sole discretion of the Board.

## ARTICLE IX Party Walls

Section 1. General Rules of Law to Apply. Each wall that is built as a part of the original construction of the Units upon the Properties and placed on the dividing line between the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto. If any portion of the original structures constructed on each Lot, including any party wall, any extension of a party wall, or any common fence, protrudes over an adjoining Lot, or into the Common Area, such structure, wall or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Area, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall or fence, nor any action for damages. If there is a protrusion as described in the immediately preceding sentence, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the encroaching structure, wall, or fence. The foregoing provision also shall apply to any replacements in conformance with the original structure, wall or fence constructed by Declarant. The provisions of this Section 1 shall be perpetual in duration and shall not be affected by an amendment of this Declaration.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

## ARTICLE X Covenants for Assessments

Section 1. Creation of Lien and Personal Obligation of Assessments. Each Lot Owner covenants and agrees to pay to the Association the following assessments, as applicable (collectively the "Assessments"): 1) Base Assessments; 2) Special Assessments; 3) Specific Assessments; 4) Insurance Assessments; and 5) Working Capital Assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Board (not to exceed the highest rate allowed by North Carolina law), late charges, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of the conveyance. However, no first mortgagee who obtains title to a Lot by exercising the remedies provided in its mortgage or deed of trust, or any individual obtaining title by or through a foreclosure, shall be personally liable for unpaid assessments which accrued prior to such acquisition of title. In the event of any transfer of title to a Lot, the lien of the assessment shall not be extinguished.

Assessments levied by the Association shall be used for improvements and maintenance of the Common Area, improvements and maintenance of the Lawn Maintenance and Landscape Elements on Lots, payment of utilities associated with the Lawn Maintenance and Landscaping Elements, enforcing this Declaration, paying taxes, insurance premiums, legal and accounting fees, governmental charges, establishing working capital, paying dues and assessments to any organization of which the Association is a member, including

those required under the Maintenance Agreement; and doing any other things necessary or desirable in the opinion of the Association to maintain the Property and the Lawn Maintenance and Landscape Elements to community-wide standards, and for such other expenditures as approved by the Board to promote the recreation, health, safety, and welfare of the Owners and residents of the Property.

Section 2. Base Assessments. At least ninety (90) days before the beginning of each fiscal year, the Board shall adopt a proposed annual budget, as follows:

A. Budget for the Base Assessments for Lots within Cypress Grove consisting of the annual cost of improvements and maintenance of the Lawn Maintenance and Landscape Elements, as said term is defined in Article I; improvements and maintenance of any Common Area; payment of utilities associated with the Lawn Maintenance and Landscaping Elements; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees; governmental charges; and establishing working capital; paying dues and assessments to any organization of which the Association is a member, including those required under the Maintenance Agreement; and doing any other things necessary or desirable in the opinion of the Association to maintain the Property and the Lawn Maintenance and Landscape Elements to community-wide standards, and for such other expenditures as approved by the Board to promote the recreation, health, safety, and welfare of the Owners and residents of the Property.

B. Such other budgets as the Board deems appropriate, including but not limited, to an annual capital reserve budget for maintenance and replacement of capital improvements which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

Within thirty (30) days after adoption of the proposed budgets for Cypress Grove, the Board shall provide to all Owners a summary of the budget and notice of a meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. Each budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association entitled to vote on the particular budget reject the budget. All Members shall be entitled to vote on the budget for the Base Assessments. In the event a proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board. The Base Assessments for each Lot shall be established based on the annual budget thus adopted, with all Lots funding the budget for the lawn maintenance and landscaping; provided, however, that the first Base Assessments shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Board. The Board shall have the authority to require the Assessments to be paid in periodic installments. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

Section 3. Special Assessments. In addition to the Base Assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. The Board may establish the amount of the Special Assessment if it is One Hundred Dollars (\$100.00) or less in any assessment year for each Member. Except as otherwise specifically provided herein, any Special Assessment greater than One Hundred and No/100 Dollars (\$100.00) shall require the affirmative vote or written consent of one-half (1/2) of the Members which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 4. Specific Assessments. The Association shall also have the power to levy Specific Assessments against a particular Lot as follows:

A. to cover the costs, including overhead and administrative costs, of providing services to the Lot upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service; and

B. to cover costs incurred in bringing the Lot into compliance with the Cypress Grove Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided that, to the extent required by law or the By-Laws, the Board shall give the Owner prior notice and an opportunity for a hearing before levying any Specific Assessment under this subsection.

Section 5. Insurance Assessments. All premiums on insurance policies purchased by the Board or its designee and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may at any time levy against the Owners equally an "Insurance Assessment", in addition to the Base Assessments, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the Base Assessment.

Section 6. Working Capital Assessments. At the time title to a Lot is conveyed, the purchaser shall pay a contribution in an amount equal to one (1) year of the then-current annual assessment to the Association as working capital to be used for operating and capital expenses of the Association including but not limited to allocations to reserves for maintenance and replacement of capital improvements and the maintenance of Common Areas. Such amounts paid for working capital are not to be considered as advance payment of the Base Assessments or any other assessments.

Section 7. Rate of Assessment. The Association may differentiate in the amount of assessments charged for Cypress Grove when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed dwellings for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. Provided, however, that Assessments must be fixed at a uniform rate for all Lots similarly situated.

Section 8. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant. Provided, that Stevens shall not be obligated to pay Assessments for Lots they own. Declarant and/or its successors and assigns shall not be obligated to pay Assessments (but Declarant and/or its successors and assigns, at its option may subsidize the Association until the Association has sufficient revenues).

Section 9. Effect of Nonpayment of Assessments and Remedies of the Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by abandonment of his Lot. All unpaid installment payments of the Assessments shall become immediately due and payable if an Owner fails to

pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

Section 10. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of thirty (30) days or longer.

A. The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which said Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 of the Act are enforceable as Assessments.

B. The lien under this section shall be prior to all liens and encumbrances on a Lot except (1) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of the Superior Court, and (2) liens for real estate taxes and other governmental assessments and charges against the Lot.

C. The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

D. Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

E. Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors, and assigns.

F. A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

Section 11. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release or any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

## ARTICLE XI Easements

A. The Declarant reserves for itself, its successors, assigns, and the Association easements over the Property as necessary to enable the Association to fulfill its maintenance responsibilities under this

Declaration.

B. The Declarant reserves for itself, its successors, assigns, and the Association, non-municipal easement for utilities and drainage along and inside those portions of any Lot designated as "Utility or Drainage Easement" on the Plat as and as otherwise noted on Plat, for the purpose of installing, inspecting, and repairing any drain ways, swales, ditches or gutters for surface water and such other utilities as the Declarant may install in its sole discretion. No structures or plantings or other materials shall be placed or permitted to remain upon such easement areas which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct, or reverse the flow of water or which may damage or interfere with the established slope ratios or create erosion problems.

C. The Declarant and the Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, or safety reasons, to perform maintenance, to inspect the Lot to ensure compliance with these protective covenants, and to enforce these protective covenants. The Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

D. The Declarant reserves for itself, its successors, assigns, and the Association, all easements benefitting the Property including those noted in the Maintenance Agreement as to the Management Agreement Common Area or otherwise noted herein or on the Plat connection with the Common Areas within the Planned Community as necessary to provide access, ingress and egress, to and the installation of utilities for any Additional Property.

E. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

## **ARTICLE XII** **Rights of Developer**

The Declarant shall have, and there is hereby reserved to the Declarant, the following rights, powers, and privileges which shall be in addition to any other rights, powers, and privileges reserved to the Declarant herein:

A. To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over Cypress Grove or to qualify Cypress Grove or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, storm-water regulations, construction standards, aesthetics, and matters affecting the public health, safety, and general welfare. A letter from an official of any such corporation or agency, including without limitation, the North Carolina Department of Environmental and Natural Resources, the Department of Veterans Affairs, U. S.

Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section. Declarant may at any time alter the maximum allowable built-upon area for any Lot at any time before the Lot is conveyed by the Declarant.

B. To comply with the terms of the Maintenance Agreement.

C. Except as provided in Subsection D of this Article XII, additional residential property and Common Area may be annexed to the Property only with the consent of the Members entitled to cast two-thirds (2/3) of the votes each of the Class A and Class B Members of the Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during Declarant's Control Period, Declarant must also consent to such action.

D. All or any portion of the Additional Property may be annexed by the Declarant without the consent of Members within ten (10) years of the date of this instrument. Declarant shall have no obligation of any kind to annex any or all of the Additional Property and, should Declarant elect to annex all or any portion of the Additional Property, Declarant shall have no obligation of any kind to annex the Additional Property in any particular sequential order. Should Declarant elect to annex all or any portion of the Additional Property and accordingly to subject such property to the terms and conditions of this Declaration, with regard to all or any part of the Additional Property annexed by Declarant, to make such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such additions and/or modifications shall have no effect upon the properties previously subjected to this Declaration. With regard to any portion of the Additional Property not annexed by Declarant, Declarant makes no representations with regard to the use of such property or the exterior appearance, design, size or intended purpose of any improvements now or hereafter erected on such property.

E. Subject to the terms and conditions of this Declaration and so long as it has a right to annex additional property, Declarant may withdraw and remove property then owned by the Declarant, its affiliates, or the Association from the coverage of these protective covenants, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Property, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property.

F. This Declaration may be amended unilaterally, without the approval of any Lot Owners, by the Declarant (or the Board in the case of sub-paragraphs II, III, IV, V and VI hereof) as follows:

I. In any respect on or before December 31, 2030 provided Declarant retains ownership of any Lot, provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot and does not adversely affect the title to any Lot.

II. To the extent this Declaration applies to Additional Property, including, but not

limited to, amendments to add additional classes of Membership to the Association, to add or alter Lawn Maintenance and Landscape Elements or Common Area, and to establish minimum square footage and other standards for structures.

- III. To correct any obvious error or inconsistency in drafting, typing, or reproduction.
- IV. To qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status.
- V. To incorporate or reflect any platting change as permitted by this Article or as otherwise permitted herein.
- VI. In any respect as to the Maintenance Agreement, provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot and does not adversely affect the title to any Lot.

F. So long as the Declarant or its designee shall retain ownership of any Lot, it may utilize any such Lot for offices, models, or other purposes relating to the development, construction, sale or rental of Lots and dwellings located within Cypress Grove. Additionally, in connection with any of the above activities, the Declarant and its agents shall have the right to park vehicles and to display commercial materials (including, without limitation, signs, advertisements, or other promotional materials) on any street or within the right of way thereof. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose.

#### **ARTICLE XIII** **Lots Subject to Declaration**

The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of Cypress Grove and the Lots. All present and future owners, tenants and occupants of the Lots, and their guests or invitees, shall be subject to and shall comply with the provisions of this Declaration and the Maintenance Agreement as they may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant, or occupant. The Covenants and Restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, their heirs, successors, and assigns, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by eighty percent (80%) of the then Lot Owners has been recorded within the year preceding any extension, agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such instrument. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

#### **ARTICLE XIV** **Enforcement and Remedies**

Enforcement of these covenants shall be by proceedings at law or in equity against any person or

persons violating or attempting to violate any covenant, and the aggrieved party, whether it be a Lot Owner or the Association, may request restraint of the violation or damages resulting from said violation.

The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors, and assigns. The Board shall be entitled to enforce its Articles of Incorporation, Bylaws, and Rules and Regulations. In addition to the remedies otherwise provided for herein concerning the collection of Assessments, the following remedies shall be available:

A. Association to Remedy Violation. In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Articles of Incorporation, or Rules and Regulations, the Board, after providing notice, may enter upon the Lot and remedy the violation or perform the required maintenance or other activities, all at the expense of the Owner. Provided, however, that the Board shall not be required to provide notice in the event of an emergency in accordance with Section VI (4) of this Declaration. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be chargeable to the Lot, including collection costs and reasonable attorneys' fees. Such amounts shall be due and payable within thirty (30) days after Owner is billed. If not paid within said thirty (30) day period, the amount thereof may immediately be added to and become a part of the Base Assessment levied against said Owner's Lot. In the event that any maintenance activities are necessitated to any Common or Limited Common Elements by the willful act or active or passive negligence of any Owner or an Owner's family, guests, invitees, or tenants, and the cost of such maintenance, repair, or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors, the cost of the same shall be the personal obligation of the Owner, and if not paid to the Association upon demand, may immediately be added to and become a part of the Base Assessment levied against said Owner's Lot.

B. Fines. The Association may, in accordance with the procedures set forth in the Planned Community Act, establish a schedule of and collect fines for the violation of this Declaration or of the Association's Articles of Incorporation, Bylaws, or Rules and Regulations. If an Owner does not pay the fine when due, the fine shall immediately become a part of and be added to the Base Assessment against the Owner's Lot and may be enforced by the Association as all other Assessments provided for herein.

C. Suspension of Services and Privileges. The Association may, in accordance with the procedures set forth in the Planned Community Act, suspend all services and privileges provided by the Association to an Owner (other than rights of access to Lots) for any period during which any Assessments against the Owner's Lot remain unpaid for at least thirty (30) days or for any period that the Owner or the Owner's Lot is otherwise in violation of this Declaration or the Association's Articles of Incorporation, Bylaws, or Rules or Regulations.

D. Miscellaneous. Failure by the Association or by an Owner to enforce any covenant or restriction in this Declaration, as the same may be amended from time to time, shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided herein are cumulative and are in addition to any other remedies provided by law.

#### **ARTICLE XV** **Amendments**

Except in cases of amendments that may be executed by the Declarant or the Board as provided in Article XII, or by certain Lot Owners under Section 47F-2-118(b) of the Planned Community Act, this

Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or by the Declarant if necessary for the exercise of any Special Declarant Right or development or other right reserved to the Declarant herein.

**ARTICLE XVI**  
**Severability**

Invalidation of any one of these covenants or any part thereof by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect, and the failure of any person or entity to take action to enforce these covenants shall not be construed as a waiver of any future enforcement rights.

**ARTICLE XVII**  
**North Carolina Planned Community Act**

It is the intent of the Declarant to comply with the requirements imposed on the Property by the North Carolina Planned Community Act and to the extent any of the terms of this Declaration violate the Act, the terms of the Act shall control.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Cypress Grove Partners, LLC has caused this instrument to be duly executed as of the day and year first written above.

Cypress Grove Partners, LLC  
a North Carolina limited liability company

By: *Thomas J. Rawl*  
Name: Thomas J. Rawl  
Title: Manager

State of North Carolina

County of New Hanover

I certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Thomas J. Rawl.

Today's Date: January 9, 2020.

*Cindy York*  
[Notary's signature as name appears on seal]

Cindy York  
[Notary's printed name as name appears on seal]

My commission expires: August 29, 2024



[Affix Notary Seal in Space Above]

**CONSENT OF MORTGAGEE**

First Bank is the holder of that certain Deed of Trust Securing Future Advances recorded on August 15, 2018 in Book 4670, Page 1367, of the Office of the Register of Deeds of Pender County (the "Deed of Trust"). The Deed of Trust includes the Property as described in the foregoing Declaration of Covenants, Conditions, and Restrictions for Cypress Grove Townhomes (the "Declaration"). As holder of said Deed of Trust, First Bank does hereby consent to the terms, conditions, and covenants in the Declaration and agrees that the lien of said Deed of Trust is subject to the terms, conditions, and covenants contained in said Declaration.

In witness whereof, FIRST BANK has caused this Consent of Mortgagee to be signed in its corporate name by its duly authorized Agent, this the 9<sup>th</sup> day of January, 2020.

FIRST BANK

BY: Kimberly B. Boyette  
Name: Kimberly B. Boyette  
Title: Sr. Vice President

State of North Carolina

County of Brunswick

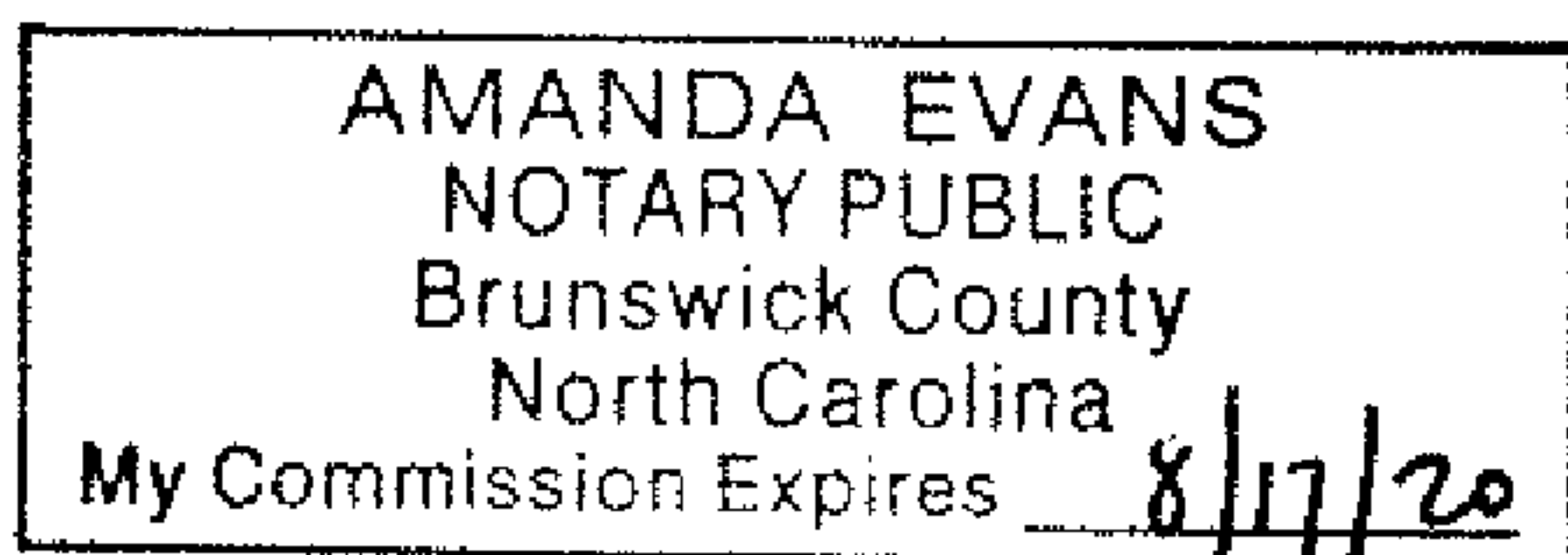
I certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:  
Kimberly B. Boyette

Today's Date: Jan 9, 2020.

Amanda Evans  
[Notary's signature as name appears on seal]

Amanda Evans  
[Notary's printed name as name appears on seal]

My commission expires: 8, 17, 2020



[Affix Notary Seal in Space Above]

**CONSENT OF MORTGAGEE**

Thomas Nelson 6, LLC and W. Merrette Moore are the holders of that certain Deed of Trust recorded on April 25, 2018 in Book 4663, Page 1197, of the Office of the Register of Deeds of Pender County (the "Deed of Trust"). The Deed of Trust includes the Property as described in the foregoing Declaration of Covenants, Conditions, and Restrictions for Cypress Grove Townhomes (the "Declaration"). As holder of said Deed of Trust, ~~XXXXXX~~ <sup>\*\*\*</sup> does hereby consent to the terms, conditions, and covenants in the Declaration and agrees that the lien of said Deed of Trust is subject to the terms, conditions, and covenants contained in said Declaration. **\*\*\*THOMAS NELSON 6, LLC**

**AND W. MERRETTE MOORE**

In witness whereof, Thomas Nelson 6, LLC and W. Merrette Moore has caused this Consent of Mortgagee to be signed in its corporate name by its duly authorized Agent, this the 9<sup>th</sup> day of January, 2020.

THOMAS NELSON 6, LLC

BY: [Signature]  
Name: G. Todd Turner  
Title: MANAGER

State of North Carolina

County of New Hanover

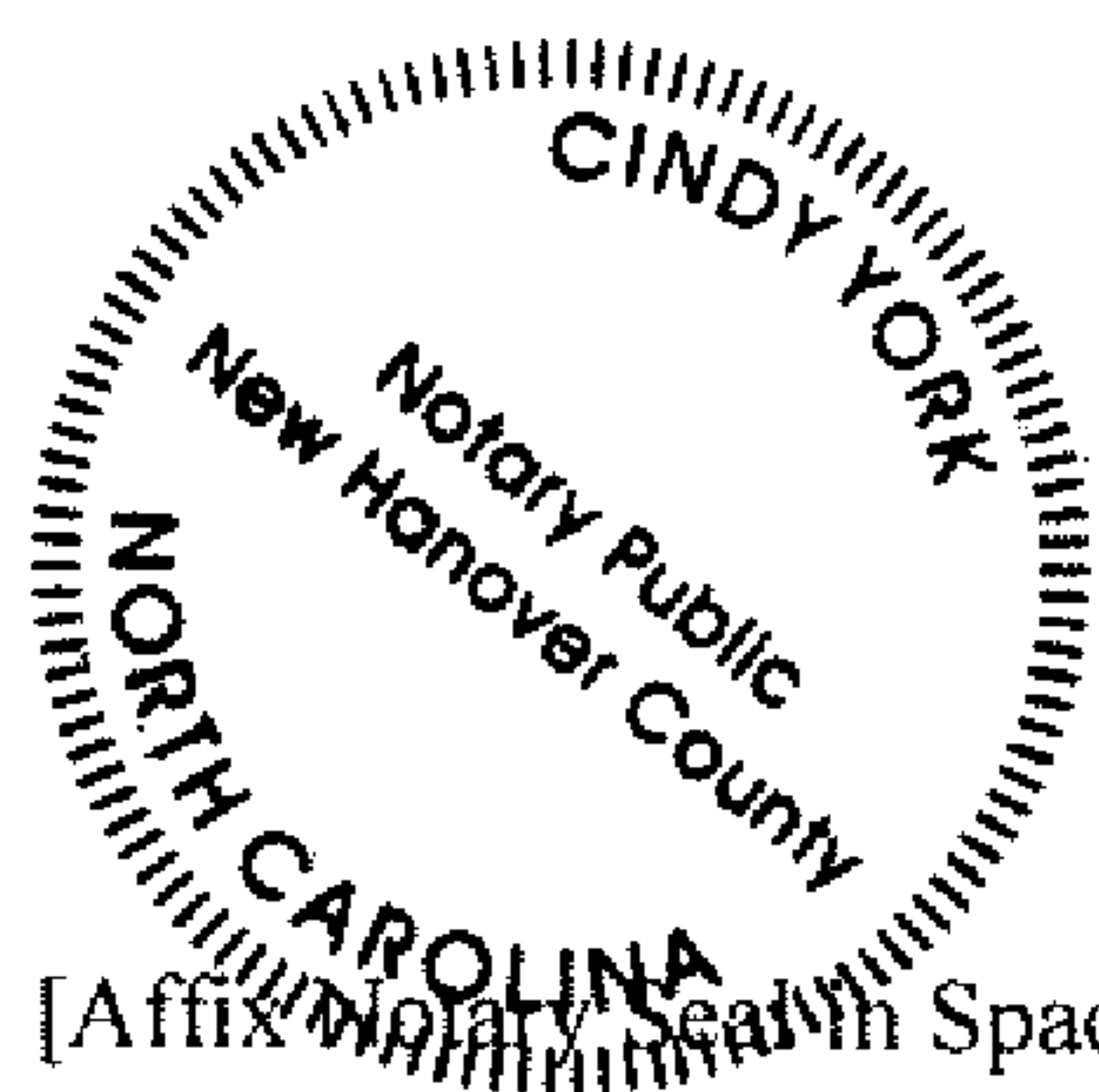
I certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:  
G. Todd Turner

Today's Date: January 9, 2020.

[Signature]  
[Notary's signature as name appears on seal]

Cindy York  
[Notary's printed name as name appears on seal]

My commission expires: August 29, 2024



[Affix Notary Seal in Space Above]

BY: W Merrette Moore  
Name: W. MERRETTE MOORE

State of North Carolina

County of New Hanover

I certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:  
W. Merrette Moore

Today's Date: January 9, 2020.

[Signature]  
[Notary's signature as name appears on seal]

Cindy York  
[Notary's printed name as name appears on seal]

My commission expires: 8-29-2024



[Affix Notary Seal in Space Above]

**EXHIBIT A**

ALL of the land shown on the plat entitled "TOWNHOME PLAT OF CYPRESS GROVE" recorded in Map Book 64, Pages 126-128, inclusive, in the Office of the Register of Deeds of Pender County, North Carolina (the "Property").