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WAYNE COUNTY, NC  
CONSTANCE B. CORAM REGISTER OF DEEDS

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**After Recording Return to:**  
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**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
SETTLERS POINTE HOMEOWNERS ASSOCIATION**

**WAYNE COUNTY, NORTH CAROLINA**

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

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DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR SETTLERS POINTE HOMEOWNERS ASSOCIATION  
WAYNE COUNTY,  
NORTH CAROLINA

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made by ZEBULON MINI-STORAGE GROUP LLC, a North Carolina limited liability company (the "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property lying and being in Wayne County, North Carolina, and such property is shown on the legal description attached hereto as Exhibit "A", incorporated herein (the "Property"); and

WHEREAS, Declarant intends to impose on the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and to establish a procedure for the overall development, administration, maintenance and preservation of the Property; and

WHEREAS, the Settlers Pointe Homeowners Association, Inc. has previously been or shall be created to own, operate, maintain and/or manage, as applicable, the Area of Common Responsibility (as defined below) and to administer and enforce the covenants and restrictions and design guidelines imposed hereby; and

WHEREAS, it is intended that every owner of any of the Lots automatically, and by reason of such ownership in this Declaration, become a Member of the Association and be subject to its rules and regulations and the assessments and charges made by the Association; and

NOW THEREFORE, Declarant does hereby submit the Property to the provisions of this Declaration. This document establishes a mandatory membership homeowners association pursuant to the provisions of the North Carolina Planned Community Act, N.C. Gen. Stat. §§ 47F-1-101, et seq.

**ARTICLE I    DEFINITIONS**

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article, such definitions being cumulative of those set forth in the recitals and elsewhere in this Declaration.

***"Additional Property"*** shall mean any and all real property lying and being within five (5) miles of the Property.

***"Approved Builder"*** shall mean SDH Raleigh LLC, a North Carolina limited liability company, and, individually and collectively, any home builder or developer approved by Declarant for the development of the Property or construction of houses on Lots and which home builder or developer has been granted rights of Approved Builder hereunder by the Declarant in a written instrument. Declarant may grant rights of Approved Builder to one or several home builders or developers. Rights of Approved Builder hereunder shall apply only to the Lots within the Property which are acquired by such Approved Builder.

***"Annual Assessment"*** shall have the meaning specified in ARTICLE VI entitled "ASSESSMENTS", and shall constitute the assessments which, pursuant to the provisions of such Article, shall be levied by the Association against the Lots each year for the purpose of raising the funds necessary to pay the "Annual Expenses" (as that term is defined in such Article).

***"Area of Common Responsibility"*** shall mean the areas, which by the terms of this Declaration or by contract or agreement with any other Person become the responsibility of the Association.

**“Articles of Incorporation”** shall mean the Articles of Incorporation of the Settlers Pointe Homeowners Association, Inc., as the same may be amended from time to time.

**“Association”** shall mean Settlers Pointe Homeowners Association, Inc., a North Carolina non-profit corporation.

**“Board of Directors”** or the **“Board”** shall mean the body responsible for the administration of the Association, as provided in the Bylaws.

**“Bylaws”** shall mean the Bylaws of the Association, as the same may be amended from time to time.

**“County”** shall mean and refer to Wayne County, North Carolina.

**“Declarant”** shall mean Zebulon Mini-Storage Group, LLC, a North Carolina limited liability company, its successors and assigns, or any person or entity to whom all of Declarant’s rights reserved to the Declarant hereunder are assigned in accordance with the provisions hereof. The Declarant’s rights shall only be assigned by written, recorded instrument expressly assigning those rights. Any purported assignment without such consent shall be deemed void and of no force and effect.

**“Declaration”** shall mean this Declaration of Covenants, Restrictions and Easements for Settlers Pointe Homeowners Association, as the same may be hereafter amended in accordance with the terms hereof.

**“Development Period”** shall mean the longer of (a) the period of time during which Declarant or Approved Builder owns any property that is subject to this Declaration or (b) the period of time during which Declarant has the unilateral right to subject Additional Property to this Declaration pursuant to ARTICLE II. Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument with the Register of Deeds.

**“Dwelling”** shall mean and refer to any building or portion thereof within the Property, which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the owner thereof or by tenants or lessees of the Owner, and specifically including detached dwellings located on separate Lots. A detached Dwelling shall be deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor.

**“Improved Lot”** shall mean a Lot (i) upon which there is located a structure for which a certificate of occupancy has been issued by the applicable government authority, and (ii) which has been conveyed to a Person who intends to occupy the dwelling, or if the dwelling is occupied as a residence before such conveyance, the date of such occupancy. Any Lot which has been approved by Declarant or Approved Builder for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or Approved Builder, so long as such Lot is approved for use as a model home and is not occupied for residential purposes.

**“Lot”** shall mean each portion of the Property which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family, as shown on the Plat.

**“Member”** shall mean a Person subject to membership in the Association pursuant to ARTICLE IV entitled “The Association”.

**“Mortgage”** shall mean a deed of trust or other document by means of which title to any Lot is conveyed or encumbered to secure a debt. The term **“Mortgagee”** shall refer to a beneficiary or holder of a Mortgage.

**“Owner”** shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

**“Person”** shall mean a natural person, corporation, trust, partnership or any other legal entity.



“*Plats*” shall mean all plats for any portion of the Property, and any amendments to such Plats, which are hereafter recorded in the Register of Deeds’ plat book records, and shall also include any Plats, or amendments thereto recorded for the purpose of subjecting any of the Additional Property to this Declaration.

“*Property*” shall have the meaning ascribed to it hereinabove.

“*Register of Deeds*” shall mean the Register of Deeds for the County where the property is located.

“*Supplemental Declaration*” shall mean an instrument filed with the Register of Deeds which imposes additional restrictions and/or obligations on the land described in such instrument.

“*Security Services*” shall mean those activities, devices, or services intended to, or which may have the effect of, enhancing safety or security, including activities, devices, or services limiting or controlling access, or providing of patrol services or otherwise monitor activities within the Property.

“*Unimproved Lot*” shall mean any Lot that is not an Improved Lot.

## ARTICLE II PROPERTY SUBMITTED TO THIS DECLARATION

Section 2.01 Lots Hereby Subjected to this Declaration. Declarant, for itself and its successors and assigns, does hereby submit the Property and the Lots to this Declaration. The Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration, including, but not limited to, the lien provisions set forth herein. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

Section 2.02 All Lots Bear the Burdens and Enjoy the Benefits of this Declaration. Every Owner, by taking record title to a Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all burdens, and enjoys all benefits, made applicable hereunder.

Section 2.03 Annexation of Additional Property. Declarant may, at any time and from time to time, during a period of five (5) years after the date of this Declaration, subject all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording with the Register of Deeds an amendment to this Declaration describing the property being annexed.

From and after such recording, the annexed property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration, and all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such annexed property.

In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall further have the right at its election, without the consent of any Owner or Owners, to subject any such annexed property to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens by filing a Supplemental Declaration with the Register of Deeds covering only such annexed property. The Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, and developments contained in such additional declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the annexed property in order to reflect the different character and intended use of such property.

Except as otherwise provided for herein, no approval from any Member of the Association, or from anyone else whomsoever, shall be required for Declarant to subject Additional Property to this Declaration.

Section 2.04 Withdrawal of Property. Declarant reserves the right to amend this Declaration, during the Development Period for the purpose of removing any portion of the Property from the coverage of this Declaration,

provided such withdrawal is not contrary to the overall, uniform scheme of development for the Property and is not contrary to the planned residential development requirements of the zoning ordinance in effect for the Property. This provision includes Declarant's right to deed over property to any governmental entity as required or deemed necessary in Declarant's discretion. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not Declarant.

Section 2.05 Other Acts of Declarant. Declarant reserves the right to amend this Declaration during the Development Period to merge the Association into other homeowners' or community associations and to combine this Declaration with the declaration of such association.

### **ARTICLE III EASEMENTS OVER AND AGREEMENTS REGARDING THE PROPERTY**

Section 3.01 Easements over Lots. The Lots shall be subject to, and Declarant does hereby grant, the following non-exclusive perpetual and temporary easements for the enjoyment of Declarant, the Association, any Approved Builder, and subcontractors authorized by Declarant, Approved Builder, the Members, the Owners, and the successors-in-title of each:

- (a) Easements Shown on Plats. Each Lot shall be subject to all easements, borders, buffers and the like which are shown on the Plats as affecting such Lot.
- (b) Entry. Each Lot shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration
- (c) Slope Control. Each Lot shall be subject to an easement for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct, or retard drainage flow.
- (d) Surface Water Drainage. Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over, under or across such Lot, including any runoff or carryover of water from one Lot to another, provided that such cross Lot drainage condition arises from the natural topography of the Property or was created by Declarant.
- (e) Utilities. Declarant and Approved Builder hereby reserve and establish for the benefit of Declarant, Approved Builder, and the Association a blanket easement upon, across, above and under all of the Property for access, ingress, egress, installing, altering, repairing, replacing, and maintaining all utilities serving the Property or any portion thereof, including, but not limited to, gas, water, sanitary sewer, reuse water, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, internet system, or security system which the Declarant, Approved Builder, or the Association might decide to have installed to serve the Property. Declarant, Approved Builder, the Association or their respective designees, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, Declarant, Approved Builder, or the Board shall have the right to grant such easement. The Board of Directors, without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements under, through, or over the Lots, the Common Area, either, or both, as may be reasonably necessary to or desirable for the ongoing operation and maintenance of the Property.
- (f) Easement for Entry Features, Mailbox Kiosk and Streetscapes. Declarant and Approved Builder hereby reserve and establish for the benefit of Declarant, Approved Builder, and the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features, the mailbox kiosk, and streetscapes for the Property, over and upon any portion of a Lot containing such entry features, mailbox kiosk, or streetscapes as may be more fully described on the recorded subdivision plat(s) for the Property. The easement and right herein reserved shall include the right to cut, remove and plant trees,

shrubbery, flowers and other vegetation around entry features, mailbox kiosk, and streetscapes and the right to grade the land under and around the same.

- (g) Easement for Drainage. Declarant and Approved Builder hereby reserve and establish for the benefit of Declarant, Approved Builder, and the Association an easement upon, across, above and under all storm water drainage easement areas as shown on the recorded subdivision plat(s) for the Property for access, ingress, egress, installing, altering, repairing, replacing, and maintaining the storm water drainage system and related facilities serving the Property or any portion thereof. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut, or fill. In addition, Declarant and Approved Builder hereby reserve and establish for the benefit of Declarant, Approved Builder and the Association a blanket easement across all Lots for creating and maintaining satisfactory drainage in the community; provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure. It is anticipated that increased storm water run-off across downstream Lots will result from the construction of impervious surface within or adjacent to the Property. Neither the Declarant, Approved Builder, the Association, nor their respective officers, directors, representatives or agents nor any builder or Owner constructing according to plans and specifications approved by the ARC shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the community.
- (h) Easement During Development Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, Architectural Guidelines, and amendments or revisions thereto, during the Development Period, Declarant and Approved Builder reserve and establish easements across the Property to maintain and carry on, upon such portion of the Property as Declarant or Approved Builder may reasonably deem necessary, such facilities and activities as in its sole opinion may be required or convenient for Declarant's or Approved Builder's, as the case may be, development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or for the development, construction or benefit of any neighboring property, including, but not limited to: (a) the right to place or authorize the placement of marketing and directional signs on Lots or right-of-way(s) at street intersections within the community; (b) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Property, including, without limitation, any Lot; (c) the right to tie into any portion of the Property with streets, driveways, paths, parking areas, and walkways; (d) the right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, reuse water, sewer and drainage lines and facilities constructed or installed in, on, under and over the Property; (e) the right to grant easements over, under, in or on the Property, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and over the Property; (f) the right, without the consent of any Person, to subdivide and/or revise and re-record the subdivision plat(s) of the Property, including, without limitation, creating or more specifically describing any Lot, changing any Lot or portion of a Lot to Common Area, changing Common Area to a Lot or right-of-way or creating a public or private street over all or any portion of a Lot or other property within the community; provided, however, the boundary lines of any Lot not owned by Declarant or Approved Builder shall not be changed without the written consent of the Owner(s) and Mortgagee(s) of such Lot; (g) the right to convert Lots (with the consent of the Owner thereof) to Common Area or streets; (h) the right to construct utilities, recreational facilities and other improvements on Common Area; (i) the right to carry on sales and promotional activities in the community; and (j) the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and Approved Builder may use residences, offices or other buildings owned or leased by Declarant or Approved Builder, respectively, as model residences and sales offices. This Section shall not be amended without the written consent of Declarant and Approved Builder until the rights of Declarant and Approved Builder have terminated as provided in this Declaration.

Section 3.02 Easements Over Association Property. All Common Areas shall be subject to, and Declarant and the Association do hereby grant, the following easements:

- (a) Utility and Drainage. An easement across, in, under, over, and through the Common Areas for purposes of

the construction, installation, repair, maintenance and use of all utility and drainage facilities serving any portion of the Property. Any easement reserved pursuant to the provisions of this Section will be located so as not to interfere unreasonably with the use of any Common Area and, to the extent practicable, along the boundaries of the Common Area. Without limiting the generality of the foregoing, no utility easement may be installed under an existing structure or so close to a structure as to have a material adverse effect on the structure. When the Declarant, Approved Builder, or Association requests that an easement arising under this Section be relocated, agrees to bear the expense of relocating the easement, and when the easement can be accomplished without diminishing the quality or quantity of utility service, without increasing the cost of delivering that service and without an interruption in that service of more than eight (8) hours, then the Person that benefits from the easement must agree to the requested relocation.

- (b) Declarant's Development Easement. An easement in favor of Declarant and Approved Builder for the exclusive use of such portions of the Common Areas as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the sale of, any Lots, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements may be exercised by any and all persons who the Declarant or Approved Builder authorizes to exercise the same, including, without limitation, real estate sales agents and brokers, and subcontractors, of improvements upon the Lots, irrespective of whether such persons are affiliated with the Declarant or Approved Builder. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate thirty (30) days after the date that all of the Lots are Improved Lots. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Areas shall be used by authorized persons pursuant to the exercise of the easements herein stated.
- (c) Declarant's Activity Easement. Notwithstanding any provision contained in this Declaration, the Bylaws, the Articles of Incorporation, use restrictions, rules and regulations, or any amendments thereto, during the Development Period, it shall be expressly permissible for Declarant and Approved Builder to maintain and carry on, upon such portion of the Property as Declarant or Approved Builder may deem necessary, such facilities and activities as may reasonably be required by the Declarant or Approved Builder, including but without limitation, the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Property; the right to tie into any portion of the Property with driveways, parking, areas and walkways; the right to tie into and maintain and repair any device (without a tap-on or any other fee for doing so), replace, relocate, maintain, and repair any device which provides utility or similar service including, without limitation, electrical, telephone, internet, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, or over the Property; the right to carry on sales and promotional activities on the Property; and the right to construct and operate business offices, signs, construction trailers, and model residences.

Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Declarant and Approved Builder, and their respective agents, employees, successors, and assigns, are permitted to maintain and carry on any Lot owned by Declarant or Approved Builder such facilities and activities as may be reasonably required, convenient, or incidental to the development, construction, completion, improvement, and sale of Declarant's or Approved Builder's Lot(s), including, without limitation, the installation and operation of development, sales and construction trailers and offices, signs and models upon any Lot(s) owned by the Declarant or Approved Builder. The rights under this Section 3.02 to maintain and carry on such facilities and activities will include specifically the right to use a Lot as a model and as offices for the sale or lease of Lots and for related activities.

Section 3.03 Duke Energy Progress. The Declarant reserves the right to subject the Property to a contract with Duke Energy Progress for the installation of street lighting which requires a continuing monthly payment to Duke Energy Progress by the Owners or the Owners through the Association until such time, if any, as the applicable governmental authority either accepts the existing street lighting system without change or accepts the system with Duke Energy Progress being compensated for any required changes.

## ARTICLE IV THE ASSOCIATION

Section 4.01 The Association. Prior to the date this Declaration has been recorded with the Register of Deeds,

Association has been formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the maintenance of the Area of Common Responsibility, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as are required of the Association hereunder or as the Board of Directors shall deem to be in the best interests of the Members of the Association.

Section 4.02 Membership. Every Owner is and shall be a Member of the Association. In no event shall such membership be severed from the Ownership of such Lot.

Section 4.03 Classes of Membership; Voting Rights. The Association shall have two classes of voting membership: "Class A" and "Class B".

- (a) Class A. The Class A Members shall be all those Persons holding an interest required for membership in the Association, as specified in this Section 4.03, except for those Persons who are Class B Members. Until such time as the Class A Members shall be entitled to full voting privileges, as hereinafter specified, the Class A membership shall be a non-voting membership except as to such matters and in such events as are hereinafter specified.

The Class A Members shall be entitled to full voting privileges on the earlier of the following dates to occur: (i) the date which the Declarant, may so designate by notice in writing delivered to the Association, or (ii) the termination of the Development Period (or such lesser percentage as may be required by the United States Department of Housing and Urban Development "HUD"). Until the earliest of these dates occurs, the Class A Members shall be entitled to vote only on matters for which it is herein specifically provided, or for which it is provided by law, that approval of each and every class of membership of the Association is required. When entitled to vote, Class A Members shall be entitled to cast one (1) vote for each Lot in which they hold an interest required for membership.

- (b) Class B. Declarant shall be the only Class B Member. Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters and in all events. At such time as the Class A Members shall be entitled to full voting privileges, as provided in Paragraph (a) hereof, the Class B membership shall automatically terminate and cease to exist, and the Class B Member shall be and become a Class A Member insofar as it may then hold any interest required for membership.

From and after the date at which the Class B membership automatically terminates and ceases to exist, such membership shall not be renewed or reinstated.

Section 4.04 Suspension of Membership Rights. The membership rights of any Member of the Association, including the right to vote, may be suspended by the Board of Directors pursuant to the authority granted in the Bylaws. Any such suspension shall not affect such Member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the Member's Lot in favor of the Association.

Section 4.05 Meetings of the Membership. All matters concerning the meetings of Members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to Members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law.

Section 4.06 Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the Members of the Association, or the Owners of Lots, must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been elected by a vote of the Class B Member) shall be personally liable to any owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, and shall be liable to the Association only for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence, compensation for services beyond reimbursement for expenses, acting in

bad faith, obtaining an improper personal benefit in transaction involving the Association, liability from the operation of a motor vehicle, unlawful loans or distributions from the Association, or fraud against the Association.

Section 4.07 Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any Person or other entity to manage the affairs of the Association, or any part thereof, as the Board of Directors deems to be in the best interests of the Association.

## **ARTICLE V    ASSOCIATION PROPERTY**

Section 5.01 Common Areas and Association Property. The Declarant shall have the right to transfer and convey to the Association any portion of the Property. All portions of the Property which the Declarant transfers to the Association shall thereafter constitute Common Areas. Said right may be exercised by the Declarant any time, and from time to time, until five (5) years after the end of the Development Period.

The Association will govern use of the Common Areas and may promulgate rules and regulations related to such use. The Declarant or the Association may authorize persons who are not Owners to use the Common Areas or portions of the Common Areas.

The Common Areas shall be conveyed to the Association by special warranty deed free of debt encumbrance, and subject to easements and encumbrances recorded with the Register of Deeds, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements. COMMON AREAS SHALL BE CONVEYED TO THE ASSOCIATION WITHOUT WARRANTY – “AS IS” AND “WHERE IS”.

Section 5.02 Member’s Rights in Association Property. Every Owner of any Lot shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot(s) owned by such Owner. Such right and easement of enjoyment and use are and shall be subject to the limitations and easements which are described in this Declaration and to the right of the Association to promulgate reasonable rules and regulations regarding the use of Common Areas, and the right of the Association, to suspend the enjoyment rights of the owner of any Lot during any period in which any assessment which is due to the Association from such Owner remains unpaid, and such period as the Board of Directors may consider appropriate for any infraction of the terms of this Declaration or the Associations’ published rules and regulations. In addition, the Board of Directors may permit other persons who are not residents of any Lots to use the Common Areas upon such terms and conditions, and for the payment of such fees, as shall be determined by the Board of Directors.

Section 5.03 Condemnation. If any part of the Common Areas is either: (a) taken by any authority having the power of condemnation or eminent domain, or (b) conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least eighty percent (80%) of the Class A votes (and, if during the Development Period, the written consent of Declarant), then the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent available unless, within sixty (60) days after such taking, at least sixty-seven percent (67%) of the Class A votes (and Declarant, if during the Development Period) otherwise agree. If the taking or conveyance does not involve any improvements on the Common Areas, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

Section 5.04 Damage or Destruction. If any improvements located on any Common Areas are damaged or destroyed on account of the occurrence of any casualty, the Board of Directors shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of casualty, by at least 67% of the Class A votes (and by Declarant, if during the Development Period), not to repair or reconstruct such damage. If it shall be decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of

such damage or destruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Class A Members, levy special assessments to cover the shortfall.

Section 5.05 Actions Requiring Owner Approval. Any conveyance or mortgaging of the Common Areas will require the consent of at least eighty percent (80%) of the Class A votes held by Members other than the Declarant, if, during the Development Period, the consent of Declarant. If HUD is insuring the Mortgage on any Lot or the VA is guaranteeing the Mortgage on any Lot and if HUD or the United States Department of Veterans Affairs (“VA”) regulations require such approval, then any conveyance or mortgaging of the Common Areas by the Association will require the consent of at least sixty-seven percent (67%) of the Class A votes held by members other than the Declarant, during the Development Period, the consent of Declarant. Notwithstanding anything to the contrary in this Section, however, the Association, acting through the Board of Directors, may grant easements over the Common Areas for installation and maintenance of utilities and drainage facilities, roads and pathways, and for other purposes not inconsistent with the intended use of the Common Areas, without the approval of the Membership.

Section 5.06 No Partition. The Common Areas shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all mortgages encumbering any portion of the Property.

Section 5.07 Taxes and Governmental Assessments. The Association shall pay when due, and in any case before the accrual of penalties thereon, all taxes, assessments, license fees, permit fees, and other charges imposed by any governmental authority in connection with the Association’s ownership or operation of the Common Area. Provided, however, that the Association may institute an appropriate legal proceeding for the purpose of contesting or objecting to the amount or the validity of any such tax, assessment, fee, or charge by appropriate legal proceedings. If the Association fails to pay any governmental charge when due or fails to contest any governmental charge in a timely and appropriate legal proceeding, then each Owner shall become personally obligated to pay to the governmental authority imposing such charge a portion of the charge in an amount determined by multiplying the total charge by a fraction, the denominator of which is the total Lots and the numerator of which is the Lots owned by the Owner for whom the calculation is being performed (the “Owner’s Share”). If the Owner does not pay the Owner’s Share within thirty (30) days following actual notice to the Owner of the Owner’s Share, then the Owner’s Share shall become a continuing lien on the property owned by the Owner, and the governmental entity may bring an action at law against the Owner to obtain payment of the Owner’s Share or may foreclose the lien against the property of the Owner.

## ARTICLE VI ASSESSMENTS

Section 6.01 Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance for an Improved Lot, covenants and agrees to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such person in accordance with the terms and provisions of this Declaration. During the Development Period, no assessment created pursuant to this Article VI may be levied against Declarant or Approved Builder.

All sums lawfully assessed by the Association against any Lot and the Owner thereof, together with interest thereon, late charges, and the costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of the Owner of such Lot and constitute a continuing lien in favor of the Association on such Lot prior and superior to all other liens whatsoever except: (1) liens for ad valorem taxes on the Lot; (2) the lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Declaration; and (3) the lien of any secondary purchase money Mortgage covering the Lot, provided that neither the grantee nor any successor grantee of such Mortgage is the seller of the Lot. The covenant to pay assessments herein stated is and shall be a covenant running with land.

Section 6.02 Purposes of Assessments. The assessments levied by the Association pursuant to this Section shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to the Act, this Declaration, the Articles of Incorporation, and the Bylaws (such costs and expenses being herein referred to as the “Annual Expenses”). Without limiting the generality of the

foregoing, the Annual Expenses shall include the costs of: payment of all costs and expenses incurred by the Association in connection with the maintenance of the Area of Common Responsibility and the Association's other operations; payment of the premiums for all insurance, fidelity and other bonds which shall be obtained by the Association; the payment of the fees of such management firms as the Board of Directors shall employ; payment of fees for the provision of such professional services as the Board of Directors shall determine to be required by the Association, including but not limited to legal, accounting and architectural services; and such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its Members.

Section 6.03 Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Association (said fiscal year being specified in the Bylaws) or at any time it deems best, the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserves based upon such estimate and providing for the total annual assessment to be levied against the Members of the Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Annual Assessment"). If North Carolina law requires that the Owners approve the budget, the budget shall be approved by the Owners in the manner and through the procedures specified by North Carolina law and as specified in the Bylaws.

The assessments provided for herein shall commence as to a Lot on the date that Declarant transfers the Lot. Each Owner of an Improved Lot shall pay a portion of the Annual Assessment that will be calculated by multiplying the total Annual Assessment by a fraction, the denominator will be the number of Lots and the numerator will be the number of Lots that Owner owns. The result may be adjusted by the Board by up to One Hundred and 00/100 Dollars (\$100.00) for the purpose of creating whole dollar amounts for payments, equal periodic payments and avoiding losses due to rounding. The Board of Directors shall send a copy of the budget adopted as provided above, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the Owner of every Lot, prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in a single installment or in such multiple installments as the Board of Directors shall determine and shall be paid to the Association when due without further notice.

Section 6.04 Special Assessments. If for any reason, including non-payment of any assessments to the Association by the persons liable therefore, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Lots and the Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this Section shall be payable at such times and such installments as the Board of Directors shall determine. Each Improved Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this Section.

Section 6.05 Specific Assessments. The Board may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of anything maintained by the Association, which is occasioned by the act(s) of individual Owner(s), their family, pets or their invitees, and not the result of ordinary wear and tear, (ii) for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated hereunder, or (iii) for any common expenses, other than expenses for the maintenance of the Areas of Common Responsibility, which benefit less than all of the Lots or which significantly disproportionately benefit all Lots (which expenses may be specially assessed equitably among all of the Lots which are benefited according to the benefit received); provided that in no event shall Declarant be obligated to pay any specific assessment. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses.



Upon the establishment of a specific assessment under this Section, the Board shall send written notice of the amount and due date of such specific assessment to the affected Owner(s) at least thirty (30) days prior to the date such specific assessment is due.

Section 6.06 Special Assessment for Working Capital Reserve. Upon the first transfer of title of an Improved Lot, there shall be levied against such Improved Lot and paid to the Association a special assessment against such Improved Lot an amount equal to Two Hundred Fifty and No/100 Dollars (\$250.00). The Association may comingle all special assessment payments with other funds and use such special assessment payments for any purpose authorized herein, including but not limited to offsetting Association costs, retiring debt created pursuant to Section 6.14 below, or establishing a working capital reserve fund for use in connection with capital repairs and improvements, but shall not be required to do so. Declarant or Board shall endeavor to collect such special assessment at the closing of the initial purchase of the Improved Lot, however the failure to collect such special assessment at that time shall not excuse the current Owner's obligation to make such payment.

Section 6.07 Effect of Non-Payment of Assessments; Remedies of the Association.

- (a) Delinquency Date. Any assessments, regular, special or specific, which are not paid by the due date are delinquent as of midnight of the due date.
- (b) Automatic Remedies. Except to the extent otherwise expressly required by law or unless otherwise agreed in writing by the Board of Directors, if any assessments are not paid by the due date, then:
  - (i) late charges, interest from the due date, and all compliance costs (including but not limited to, reasonable attorney's fees, administrative fees, and collection fees), will be added to and included in the amount of such assessment except as otherwise expressly provided in the Association's current Assessment Collection Policy as provided in Section 6.12 hereof;
  - (ii) the Association may notify any credit bureau or any mortgagee or other lienholder with respect to the applicable Lot as to any default, including delinquency in payment of assessments and any other monetary amounts due to the Association; and
  - (iii) the Association may exercise any other rights and remedies and institute and prosecute such other proceedings as it deems necessary to collect all amounts due.
- (c) Elective Remedies After Notice. If any assessments are not paid within thirty (30) days after the due date, then the Association may elect to exercise any or all of the following remedies, in addition to and not in lieu of the automatic remedies as above provided, and without prejudice to any other rights or remedies, provided that notice and opportunity to be heard is first given:
  - (i) Acceleration of Assessments. The Association may accelerate, through the end of the year in which notice of default and acceleration is given and for an additional six (6) month period thereafter, all regular assessments and all special assessments (including any installment payments) due or to become due during the acceleration period; provided, the maximum period of acceleration may not exceed twelve months after the first day of the month following the month in which notice of default and acceleration is given. All such accelerated assessments are deemed to be special assessments as to the applicable Lot and Owner thereof.
  - (ii) Suspension of Services. To the fullest extent allowed by law, the Association may suspend until all assessments (including all special assessments) are paid in full, all rights of the delinquent Owner, the Owner's tenants, and the related parties of either, to (i) receive any and all services provided by the Association to the applicable Lot and any improvements thereon, and/or (ii) use, employ or receive the benefits of any Common Areas, including all rights to use of any and all recreational facilities, if any.

Notwithstanding the foregoing, no Owner, Owner's tenant, or any of their related parties may be denied any rights of ingress, egress, or regress to or from the Property.

(d) Action for Debt; Foreclosure, Including Expedited Foreclosure.

- (i) Each Owner, by acquisition of any Lot within the Property or any right, title or interest therein, expressly grants to and vests in the Association: (x) the right and power to bring all actions against each Owner, personally for the collection of all delinquent assessments as a debt; (y) the right and power to foreclose the Association's continuing lien for assessments by all methods available for the enforcement of a mortgage, deed of trust or any other contractual lien, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale; and (z) a continuing power of sale in connection with the non-judicial foreclosure of the Association's continuing lien for assessments as herein provided.

The Board of Directors or the then President of the Association may appoint, in writing, at any time and from time to time, an officer, agent, trustee, or attorney of the Association (the "Trustee") to exercise the power of sale on behalf of and as the agent of the Association, including without limitation to deliver and file the notices required by the Chapter 47F of the North Carolina General Statutes (the "Code"), and to conduct the sale and to otherwise comply with said statute. The Board of Directors or the then President of the Association may, at any time and from time to time, remove any such Trustee and appoint a successor or substitute Trustee without further formality than an appointment and designation in writing. Except as otherwise provided by this Declaration, the Association will exercise its power of sale pursuant to the Code. The Association has the right and power to bid on any Lot at any foreclosure sale, either judicial or non-judicial, and to acquire, hold, lease, mortgage, or convey the same.

If directed by the Association to foreclose the Association's continuing lien, Trustee will, either personally or by agent, give notice of the foreclosure sale as required by the Code as then in effect, and sell and convey all or part of the applicable property "AS IS", "WHERE IS", and "WITH ALL FAULTS" to the highest bidder, subject to prior liens, encumbrances and any other matters of record and without representation or warranty, express or implied, by Trustee or the Association. The Association must indemnify Trustee and hold Trustee harmless from and against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the Association's lien or otherwise pursuant to this Declaration, including indemnification for all court and other costs, and attorney's fees incurred by Trustee in defense of any action or proceeding taken against Trustee regarding any of the foregoing.

The filing of suit to collect any sums due hereunder or to foreclose the Association's continuing lien for assessments may never be considered an election so as to preclude exercise of any other rights or remedies, including without limitation foreclosure under power of sale before or after a final judgment. After foreclosure, either judicial or non-judicial, the former Owner and anyone claiming under the former Owner must immediately surrender possession to the purchaser. If not, the former Owner and anyone claiming under the former Owner will be mere tenants at sufferance of the purchaser, and the purchaser may obtain immediate possession pursuant to any actions or remedies permitted by law, including an action for forcible detainer or eviction to be maintainable by the purchaser.

Each owner, by acquisition of any Lot, specifically covenants and stipulates as to each and every Trustee's foreclosure sale that the recitals in any appointment or designation of Trustee, any conveyance by the Trustee and any affidavit of the Trustee or the Association related thereto is full proof and evidence of the matters therein stated, that all prerequisites of the foreclosure sale are presumed to have been performed, and that the foreclosure sale made under the powers herein granted is a perpetual bar against the

Owner(s) of the Lot(s) sold and their heirs, executors and administrators, successors and assigns, and any Persons whatsoever claiming or to claim thereunder.

Without limitation of any other provisions of this Declaration, Declarant, during the Development Period, or the Board of Directors thereafter, are hereby specifically authorized to amend Section 6.07 in any manner deemed necessary or appropriate as regarding or to conform to applicable provisions or requirements of the North Carolina General Statutes or applicable rules pertaining thereto without the joinder or consent of any Owner or any other Person.

(e) Extinguishment of Inferior Liens. Foreclosure of the Association's continuing lien for assessments terminates, extinguishes and forever discharges all inferior or subordinate liens and encumbrances (being all liens and encumbrances except as provided by Section 6.09) as to the affected Lot. The foregoing applies to judicial and non-judicial foreclosure of the Association's continuing lien for assessments regardless of whether or not the holder of the inferior or subordinate lien or encumbrance is made a party to or given notice of any proceedings in connection therewith, including without limitation to the fullest extent permitted by law whether or not made a party to or given notice of any judicial foreclosure suit and any other proceedings in connection therewith.

Section 6.08 Effect of Foreclosure or Bankruptcy. The effect of judicial or non-judicial foreclosure of a lien which is superior to the Association's continuing assessment lien under this Declaration, or acceptance of a deed in lieu thereof, and the effect of the discharge of an Owner in bankruptcy is determined as of the date of foreclosure, the date of signing of a deed in lieu which is accepted by the grantee or the date of filing of the bankruptcy in which the Owner is discharged, as the case may be (the "Discharge Date"). Foreclosure or acceptance of a deed in lieu as aforesaid does not relieve the former Owner from the personal obligation for payment of assessments due as of the Discharge Date, but does release the Association's continuing assessment lien as to and only as to assessments due prior to the Discharge Date. The purchaser at foreclosure or grantee under a deed in lieu and an Owner discharged in bankruptcy is also relieved from any obligation for payment of assessments due prior to the Discharge Date, but is obligated to pay all assessments assessed or assessable from and after the Discharge Date and the Association's continuing assessment lien fully secures payment of said assessments. For purposes of the foregoing "assessments assessed or assessable" means (i) prorated regular annual assessments based on the number of months remaining in the calendar year in which the Discharge Date occurs regardless of whether the applicable regular annual assessment is payable in advance annually, semi-annually or quarterly, and (ii) any installments for special assessments so payable which become due after the Discharge Date.

Section 6.09 Revival of Assessment Lien. The Association's assessment lien is automatically revived as to any Owner who reacquires ownership of the applicable Lot within two (2) years after the Discharge Date (as defined in the immediately preceding Section) to the same effect as if none of the events causing the Discharge Date to occur had occurred if ownership is reacquired from the purchaser at foreclosure, the grantee under the deed in lieu of foreclosure, or any successor in title to such purchaser or grantee and the reacquisition of ownership constitutes a fraudulent transfer under Chapter 39 of the North Carolina General Statutes or under any other state or federal statutes or laws.

Section 6.10 No Merger. The Association's assessment lien is not, by merger or otherwise, extinguished or otherwise effected by acquisition of ownership of a Lot at any time and in any manner by the Association except as otherwise expressly agreed in writing by the Association.

Section 6.11 Assessments as Independent Covenant. The obligation to pay assessments is a separate and independent covenant and contractual obligation on the part of each Owner. No off-set, credit, waiver, diminution, or abatement may be claimed by any Owner to avoid or diminish the obligation for payment of assessments for any reason, including, by way of illustration but not limitation, (i) by nonuse of any Area of Common Responsibility or abandonment of a Lot, (ii) by reason of any alleged actions or failure to act by Declarant, the Association, the Board, the ARC (as defined herein), or any of their related parties, whether or not required under this Declaration, (iii) for inconvenience or discomfort arising from the making of repairs or improvements which may be or are the responsibility of Declarant, the Association, the Board, the ARC, or any of their related parties, or (iv) by reason of any action taken by Declarant, the Association, the Board of Directors, the ARC, or any of their related parties, to comply with any law, ordinance, or any order or directive of any governmental authority, or pursuant to any judgment or order of a court of competent jurisdiction.

Section 6.12 Assessment Collection Policies. The Association will adopt assessment collection policies consistent with this Declaration and in accordance with the Code. The initial Association Assessment Collection Policy will be adopted by Declarant. Declarant during the Development Period and the Board at any time may from time to time adopt and amend such other assessment collection policies as either may deem to be necessary or appropriate, including with regard to or concerning the Association Assessment Collection Policy as initially adopted by Declarant.

Section 6.13 Authority and Exemption as to Assessments. NOTWITHSTANDING ANY OTHER PROVISIONS HEREOF, ALL PROVISIONS SET FORTH IN THIS DECLARATION REGARDING DECLARANT'S AND APPROVED BUILDER'S AUTHORITY AND EXEMPTIONS AS TO ASSESSMENTS APPLY.

Section 6.14 Budget Deficits During Development Period. Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive of any allocation for capital reserves) and the annual and special assessments for such fiscal year. Such advances shall be evidenced by promissory notes from the Association in favor of Declarant and shall be repaid to Declarant if and to the extent that sufficient funds are generated by assessments in future years until such time as Declarant is repaid in full. Declarant may, but is not obligated to, forgive any promissory notes from the Association made pursuant to this Section 6.14.

Section 6.15 Failure to Assess. The failure of the Board to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of 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 until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

## ARTICLE VII MAINTENANCE OF LOTS

Section 7.01 Association's Maintenance Responsibility. Association shall be responsible for maintaining the Area of Common Responsibility, including: (a) any landscaping, grass, plants, shrubs, trees; (b) privately owned utility lines; (c) perimeter fencing; (d) brick retaining walls located on Common Areas or perimeter, (e) mail kiosks or centers, if any, and (f) the inspection and maintenance of storm water drainage facilities and dry detention basins located on and serving the Lots. If that the Association determines that any maintenance which is the responsibility of the Association hereunder is required due to the willful or negligent act of an Owner, or the occupant, family, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed to the Owner as a specific assessment. The Association may be relieved of all or any portion of its maintenance responsibilities to the extent that such property is dedicated to any local, state, or federal government or quasi-governmental entity and said entity accepts the responsibility for maintenance. If of any such assumption, assignment or dedication occurs, however, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is desirable or necessary.

The Board of Directors, in its sole discretion, may leave portions of the Property as undisturbed natural areas and may change the landscaping on the Area of Common Responsibility at any, time and from time to time, including the adding or modifying of landscaping improvements, such as the planting of seasonal flowers.

The Association shall provide the following lawn maintenance to the Lots and any related off-lot Septic Lots: mowing of grass (including the grass in the rear yard of each Lot); trimming of trees and plants; blowing of leaves; and maintaining or repairing landscaping (however, the Association shall not be responsible for replacing trees or shrubs) (the "Lawn Maintenance"). Such Lawn Maintenance shall be provided as a part of a grounds contract for the Property by a lawn company to be selected by the Board. The level of maintenance the Association shall provide shall be in the sole discretion of the Board.

Section 7.02 Owner's Maintenance Responsibility. Except to the extent the Association is responsible for maintenance as provided in this Declaration, each Owner must maintain the exterior of each Owner's Dwelling, garage, and all other buildings, structures, fences, walls, recreational equipment, landscaping, and improvements

located upon each Owner's Lot, in an attractive, sound and well maintained condition, including proper maintenance and repair as needed of paint, bricks, siding, roofs, exterior walls, driveways, parking areas and all other exterior portions of the Owner's residence and garage. Without limitation of the foregoing, each Owner must provide proper repair and maintenance as and when needed as follows:

- (a) The exterior paint on each Owner's Dwelling must be maintained so that no portion thereof peels, scales, or cracks excessively, and all painted portions remain neat and free of mildew and discoloration. NO CHANGE IN THE EXTERIOR COLOR SCHEME OF A DWELLING AS ORIGINALLY CONSTRUCTED (INCLUDING AS TO THE ORIGINAL EXTERIOR PAINT COLOR OR COLORS OR THE CONFIGURATION OF THE COLORS) IS PERMITTED WITHOUT PRIOR WRITTEN APPROVAL FROM THE ARC.
- (b) The windows must be maintained so that no caulking thereon is chipped or cracked and no window panes are cracked or broken. All windowsills, door jams and thresholds, framing and trim for all windows and exterior doors and all hinges, latches, locks and all other hardware which are part of and/or necessary to the proper functioning of all windows and exterior doors must be maintained so that all remain whole, sound, in a neat and attractive condition and fully operational.
- (c) All exterior doors, including garage doors, must be maintained, repaired, replaced and repainted as needed to prevent an unkempt or unsightly appearance, to prevent leaning or listing, and such as to maintain same in proper working condition, including replacement as needed of damaged or dented garage door panels and any cracked or broken glass in any door.
- (d) All exterior surfaces on each Owner's Dwelling, including siding, brick, stone and stucco, as applicable, must be properly maintained at all times.
- (e) All exterior surfaces of each Owner's Dwelling, including the roof and all walls, windows and exterior doors, must be periodically cleaned as needed to prevent mold, mildew, or other discoloration.
- (f) The roof on each Owner's Dwelling must be maintained to prevent sagging, to prevent leaks, so that all shingles, tiles or slates are properly secured; curled shingles or damaged shingles, tiles or slates are replaced, and no worn areas or holes are permitted to remain, and such that the structural integrity and exterior appearance of the roof is maintained. The appearance of the roof may not be changed by any such maintenance without the express written approval of the ARC.
- (g) The rain gutters and downspouts on each Owner's Dwelling, if any, must be maintained so that all are properly painted or treated to prevent rust and corrosion, are properly secured to roof, eaves, gables or exterior walls (as the case may be), are maintained without holes, and are promptly repaired or replaced if dented or otherwise damaged.
- (h) All concrete areas on each Owner's Lot, including sidewalks and driveway, must be maintained so that all cracks are appropriately patched or surfaced as they appear, expansion joints are maintained, repaired or replaced, as needed, and oil, grease and other stains are removed as they appear, and all such areas must be kept free of weeds, grass or other vegetation.
- (i) All fences or walls erected on each Owner's Lot must be maintained to prevent any listing or leaning, and all broken or damaged members and all holes and cracks must be repaired so that no portion thereof is permitted to rot or decay. INSTALLATION, PAINTING, OR STAINING OF FENCES IS PROHIBITED UNLESS APPROVED IN WRITING BY THE ARC.
- (j) All recreational equipment, which may be installed if and only if approved by the ARC, must be maintained to prevent any unsightly or unkempt condition, including for example but without limitation, proper maintenance of swing sets to prevent rust and corrosion, and proper maintenance of basketball goals to prevent rust and corrosion and by replacement as needed of torn or worn nets.
- (k) All grass, shrubbery, trees, flower beds, vegetation and all other landscaping, either natural or artificial, on each Lot must be properly irrigated and otherwise properly maintained by and at the sole cost of the Owner of each Lot at all times in accordance with the seasons. This maintenance includes without limitation all

maintenance as is reasonably necessary to obtain and maintain on a consistent and continuing basis a sanitary, healthful and attractive condition and appearance and to eliminate any condition which may create any unsanitary condition or become a harborage for rodents, vermin or other pests, including regular mowing and edging of grass, and, if any grass or shrubs become diseased or die, prompt replacement thereof with grass or shrubs of like kind and quality. IN ANY CASE WHERE A LOT ABUTS A STREET, THE OWNER MUST IRRIGATE AND MAINTAIN ALL LANDSCAPING TO THE STREET CURB REGARDLESS OF WHETHER THE LOT LINE IN FACT EXTENDS TO THE STREET CURB.

Section 7.03 Adjacent or Adjoining Owners. No Owner or their tenant will allow any condition to exist, or fail or neglect to provide any maintenance, which materially and adversely affects any adjoining or adjacent Lot, any Area of Common Responsibility, or any improvements on any such Lot or the Area of Common Responsibility.

Section 7.04 Remedy for Owner's Failure to Maintain. If the Board or ARC determines that (i) an Owner may have or has failed or refused to discharge properly the Owner's maintenance obligations as provided in this Article, or (ii) the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder may have or has been caused through the willful or negligent act or omission of an Owner, the Owner's tenants, or their respective related parties, then the Board or ARC may conduct inspections of any affected Lot, the exterior of the residence and all other buildings thereon, and all other structures and improvements thereon (a "Compliance Inspection") and perform the repair, replacement or maintenance (the "Required Work") in accordance with this Section.

The Board or ARC must give written notice of intent to conduct a Compliance Inspection and to perform Required Work. The notice may be given by posting on the front door of the Dwelling at the applicable Lot regardless of any other address maintained by the Owner. Except in the case of an "emergency", the notice must give the applicable Owner not less than ten (10) days to schedule a Compliance Inspection and to perform Required Work (or to commence and thereafter proceed with diligence to completion of Required Work which cannot be reasonably completed in ten (10) days), failing which the Board or ARC may proceed without further notice. For the purposes of this Section 7.04, "emergency" means (i) any condition which may or does cause an imminent risk of infestation by termites, rats or other vermin, or any other health, fire or safety hazard, (ii) any condition which may or does cause water infiltration in to another Lot, Common Areas, or any improvements located thereon, and (iii) any other thing, condition or exigent circumstances which may or does present an imminent risk of harm or damage to any Lot or Area of Common Responsibility, or any improvements thereon or to any Owners or occupants thereof. In the case of an emergency the Board or ARC may proceed immediately with any Required Work as either deems necessary to abate the emergency, but will thereafter proceed as aforesaid.

All costs and expenses of conducting a Compliance Inspection as to which a violation is determined to exist and all costs and expenses of Required Work performed by the Board or ARC will be assessed against the applicable Lot and the Owner thereof as a special assessment which must be paid within ten days after notice of same is given to the applicable Owner. The good faith determination by the Board or ARC as to the need for a Compliance Inspection and as to all aspects of Required Work is final and conclusive, and extends to any condition as to such Lot or which adversely affects any other Lot or Area of Common Responsibility. The Association, the Board or ARC and their related parties are not liable for trespass or any other tort or claim for damages in connection with any actions or failure to act pursuant to this Section.

Section 7.05 Damage or Destruction.

- (a) Required Repair; Permitted Removal. Whether or not insured, in the event of damage, casualty loss or other destruction to all or any portion of a Dwelling, garage, building, structure or other improvement (a "Damaged Improvement"), any Damaged Improvement must be repaired, reconstructed or replaced in its entirety, or it must be demolished and removed as hereafter provided.
- (b) Manner of Repair or Removal. All repair, reconstruction or replacement of any Damaged Improvement must be performed in such manner as to restore the Damaged Improvement to substantially the same exterior dimensions and appearance (including as to color, type and quality of materials and as to architectural style and details) as, and must be located in substantially the same location as, when the Damaged Improvement was originally constructed, or to such other appearance and condition as approved by the ARC. If the Damaged Improvement is not repaired, reconstructed or replaced as aforesaid, then the

Damaged Improvement must be removed in its entirety from the Lot, including removal of any foundation, and all other restoration work performed, including grading and sodding, as is required such that after demolition and removal Architectural Guidelines are maintained as determined by the ARC.

- (c) Time Limits. All work regarding a Damaged Improvement must be completed within sixty (60) days after the date of occurrence of the damage, casualty loss or other destruction; or, where such work cannot be completed within the applicable period of time, the work must be commenced within such period and completed within a reasonable time thereafter. In all events, all such work must be completed within ninety (90) days after the date of occurrence of the damage, casualty loss or other destruction unless, for good cause shown, a longer period is approved by the ARC.

Section 7.06 Stormwater Facility Maintenance. As provided in Section 7.01 hereof, the Association shall be responsible for the inspection and maintenance of the stormwater drainage facilities serving the Property, including, without limitation, the stormwater detention/retention pond(s) and any stormwater drainage lines, catch basins, manholes, inlets, outlets, pipes, channels, vegetation, berms or other related drainage facilities located in the community that convey water to the stormwater detention/retention pond(s) or control stormwater in the community.

The Association shall maintain complete up to date “as built” plan and design specifications for the detention/retention pond(s) and shall maintain written records of maintenance and observations. The Association shall make visual inspections at least twice a year, once in the summer after mowing and once in the winter when the vegetative cover is dormant and shall conduct additional inspections after extreme rainfall events. The Association shall adhere to the following maintenance:

- (a) Vegetative and Grass Mowing: The embankment and the area upstream and downstream of the embankments shall be mowed at least three times per year.
- (b) Trash Removal: The pond shall be checked periodically and especially after storm events and debris accumulated on the trash rack, floating in the pond or on the embankments of the pond shall be removed and maintenance shall be performed if necessary. The pond permitted shall be inspected annually and fallen trees, debris, and sediment shall be removed from the pond.
- (c) Erosion and Slope Protection: Vegetation shall be inspected in the early spring and the late summer and any bare or eroded areas shall be repaired or reseeded. If erosion is discovered during any inspection, eroded areas shall be repaired promptly.
- (d) Conduits: The discharge pipe shall be inspected thoroughly once a year. Inspection of the discharge pipe must include inspection for improper alignment (sagging), elongation, and displacement of joints, cracks, leaks, surface wear, and loss of protective coating, corrosion and blockage.
- (e) Outlet Structure: The surface of the outlet structure shall be inspected annually for cracking, splaying, displacement or movement and deterioration by cracking, slab or wall movement. Large areas of exposed reinforcing steel and severe undermining shall be repaired in accordance with a repair plan created by an engineer.
- (f) Outlet Erosion: Periodically, and especially after storm events, the outlet should be inspected and any damage repaired.

## **ARTICLE VIII ARCHITECTURAL CONTROL**

Section 8.01 Architectural Control.

- (a) No exterior construction, alteration or addition of any nature whatsoever (including but not limited to a building, outbuilding, driveway, walkway, fence, wall, garage, patio, swing set, play house, play set, trampoline, carport, spas, swimming pool or other structure, planting or removal of landscaping materials, exterior lighting, placement or installation of statuary, flags, fountains and similar items, staking, clearing, excavation, ditching, grading, filling, change in color or type of any existing improvement, improvements

or modifications to the roof, material, color, paint stain or varnish, or the interior porches, patios or similar portions of a structure which are visible from outside the Lot), shall be commenced, placed or maintained upon any portion of the Property until complete and final plans and specifications setting forth the information hereinafter described shall have been submitted to, and approved in writing by, the Architectural Review Committee (the "ARC") as to the harmony of the exterior design and general quality with the existing standards, and as to location in relation to surrounding structures and topography. The ARC is authorized to adopt procedures regarding applications for design approvals and the procedure it uses for processing applications (the "Architectural Guidelines").

The owner of each Lot shall include with each application for approval such information, plans and documents as the ARC may reasonably request and shall include the name of the contractor, a statement as to the classification of contractor's license held by such contractor, and the address and telephone number of the contractor. This information shall be submitted to the ARC with the application. If the identity and license information for the contractor is not available when the Owner makes application to the ARC, the information shall be submitted to the ARC at least thirty (30) days prior to commencement of construction.

ARC approvals shall be valid for one (1) year from the date of issuance and ARC approvals will not be modified or terminated during such period. If construction does not commence on a project for which plans have been approved within one year after the date of approval such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the ARC grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, without limiting the generality of the foregoing, the Association may, in its sole discretion, either restore the Lot to the condition that existed before construction began or may complete construction, either at the Owner's costs and with lien rights created herein and under North Carolina law.

- (b) The plans and specifications, which must be submitted to the ARC prior to the commencement of any such work upon any Lot, as hereinabove provided, shall contain at least the nature, kind, shape, height, materials, color, texture and location of such structure, alteration or landscaping and such other information as the ARC may reasonably request in order to render a decision.
- (c) The ARC shall, within thirty (30) days after receipt of a request by an Owner, furnish to any Owner a written response signed by a member of the ARC, stating whether any exterior addition to, change in, or alteration of any structure or landscaping owned by such member on a Lot is in compliance with the provisions of this Section, and such certificate shall be conclusive as to whether the same is in such compliance. If the ARC fails to respond as required by this Section 8.01, said request shall be deemed approved.
- (d) If any construction or alteration or landscaping work is undertaken or performed upon any portion of the Property (i) without application having been first made and approval obtained as provided in subparagraph (a) of this Section, (ii) in a manner that deviates from the plans approved by the ARC, or (iii) without prompt completion, as determined by the ARC, said work shall be deemed to be in violation of this covenant, and the Owner upon whose Lot said work was undertaken or performed may, in the case of unapproved work, be required to restore to its original condition, at his sole expense, the property upon which said work was undertaken or performed, or in the case of approved work, complete the work promptly and in strict compliance with approved plans. Upon the failure or refusal of any Person to perform the work required herein, the ARC, or their authorized agents or employees, may, after fourteen (14) days' notice to such Person, enter upon the property, and make such restoration or complete such work as the ARC, in the exercise of its discretion, may deem necessary or advisable. The Person upon whose property such work shall have been performed shall be personally liable to the Association for all direct and indirect costs which the Association shall incur in the performance of such work, including without limitation, reasonable attorneys' fees, administrative fees, service fees, consulting fees, and collection fees, and the liability for such cost shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in this Declaration. Such costs shall be paid to the Association by the Person liable for the same at the same time as the next due Annual Assessment payment, or at such



earlier time, and in such installments, as the Board of Directors shall determine.

Section 8.02 No Combination of Lots. Contiguous Lots may not be combined without the prior written consent of the ARC. If the ARC approves a combination, such combination shall thereafter be deemed to be a single Lot for all purposes of this Declaration, except that notwithstanding the foregoing, the amount of assessments for which such single Lot shall be thereafter liable shall be equal to the total assessments for which all of the Lots that were combined would have been liable had such combination not taken place.

Section 8.03 Exemption. Notwithstanding anything stated to the contrary herein, nothing contained in this ARTICLE VIII shall be construed as prohibiting any construction, alteration, addition or removal by the Declarant or Approved Builder upon any portion of the Property while such property is owned by the Declarant or Approved Builder. Any construction, alteration, addition or removal performed by the Declarant or Approved Builder upon any property while such property is owned by the Declarant or Approved Builder shall be exempt from the provisions of ARTICLE VIII.

Section 8.04 Architectural Review Committee. Responsibility for the review of all applications under ARTICLE VIII shall be vested in the ARC, the members of which need not be Owners, Members of the Association, or representatives of Owners or Members, and may, but need not, include architects, landscape architects, engineers, or similar professionals, whose compensation, if any, shall be established from time to time by the Association. The ARC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ARC in having any application reviewed by architects, engineers, or other professionals.

The ARC shall have exclusive jurisdiction over all construction, alterations or additions on any portion of the Property. Until one hundred percent (100%) of the Lots are Improved Lots, Declarant has the right to appoint all members of the ARC, who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of the ARC, who shall thereafter serve and may be removed in the Board's discretion.

ARC 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 8.05 Delegation. The ARC, with the approval of the Board, may delegate its responsibilities in defined categories of review (such as, but not limited to, changes during construction to previously approved plans) to a subcommittee, designated ARC member, or staff member, and may create from among its staff and/or members subcommittees to perform certain or all of its review tasks, and may also employ professional assistance in carrying out its duties and responsibilities. No delegation of the ARC's responsibilities will prevent the ARC from reviewing and overturning the decision of the person or entity to which such authority was delegated. The ARC or the Board may revoke, at any time, any delegation of the ARC's responsibilities.

Section 8.06 Limitation of Liability. The standards and procedures established pursuant to this Article VIII are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property only and shall not impose on Declarant, Approved Builder, the Association, or the ARC any duty to any Person. Neither Declarant, Approved Builder, the Association, nor the ARC, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, or for ensuring compliance with building codes and other requirements or regulations of the Governmental Authorities. IN ALL CASES THE OWNER IS RESPONSIBLE FOR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REGULATIONS AND FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF PROPOSED CONSTRUCTION OR MODIFICATIONS, THE ADEQUACY OF SOILS OR DRAINAGE. Neither Declarant, the Association, the ARC, nor any member of any of the foregoing, shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the ARC and its members shall be defended and indemnified by the Association as provided in this Declaration and the Articles of Incorporation and Bylaws of the Association.

## ARTICLE IX INSURANCE

Section 9.01 Association Insurance. The Association shall obtain and maintain commercial general liability insurance of at least One Million and 00/100 Dollars (\$1,000,000.00), and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

Section 9.02 Individual Insurance. Each Owner, by virtue of taking title to a Lot subject to this Declaration, acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots. Each Owner covenants and agrees with all other Owners and with the Association that each Owner will maintain at all times all-risk casualty insurance as well as a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire, and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of a covered item in the event of damage or destruction from any such hazard.

The Board has the right, but not the obligation, to require the Owner to furnish a copy of such insurance policy or policies to the Association. If any Owner fails to obtain insurance as required by this Section, the Association has the right, but not the obligation, to purchase such insurance on behalf of the Owner and to assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments herein.

Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association.

Section 9.03 Additional Insurance Requirements.

The Board of Directors shall utilize reasonable efforts to include the following provisions in the policies that the Association obtains:

- (a) waiver of the insurer's rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, occupants, and their respective household members;
- (b) an agreed value endorsement and an inflation guard endorsement; and
- (c) until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Lot, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Lot, the other Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums.

All policies of insurance shall be written with a company licensed to do business in the State of North Carolina. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

Nothing contained herein gives any Owner or other party a priority over the rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Lot on which there is a Mortgagee endorsement shall be disbursed jointly to such Lot Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected Owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Lot separately or to each occurrence, each Lot Owner shall be responsible for paying

the deductible pertaining to his or her Lot, if any. If any Owner or Owners fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to the terms of this Declaration.

Additionally, the Association shall obtain such insurance coverage as is necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the VA, and HUD, if and to the extent applicable to the Property.

Nothing contained herein requires the Association to make a claim under the insurance policies upon the occurrence of an insured event. The Association has the right to exercise reasonable business judgment in all insurance decisions.

## **ARTICLE X MORTGAGEE PROVISIONS.**

Section 10.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an “Eligible Holder”), will be entitled to timely written notice of: (a) any condemnation loss of any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder where such delinquency has continued for a period of sixty (60) days; (c) any default in the performance by the Owner of such encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (d) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 10.02 Audit. Upon written request of an Eligible Holder and upon payment of all necessary costs, such Eligible Holder shall be entitled to receive a copy of audited financial statements of the Association within ninety (90) days of the date of the request.

Section 10.03 No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Areas.

Section 10.04 HUD/VA Approval. As long as the Declarant has the right to appoint and remove the officers or directors of the Association, so long as the project is approved by HUD for insuring or the VA for guaranteeing any Mortgage, and if required by HUD or VA regulations, then the following actions will require the prior approval of HUD or the VA as applicable: annexation of additional property; dedication of Common Areas to any public entity; merger, consolidation or dissolution of the Association; and material amendment of the Declaration, Bylaws, or Articles of Incorporation.

Section 10.05 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association’s request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

## **ARTICLE XI RESTRICTIONS.**

To provide for the maximum enjoyment of the Lots by all of the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be only in accordance with, the applicable zoning ordinances with respect to the Property and the following provisions:

Section 11.01 Residential Use. All of the Lots shall be restricted exclusively to single-family residential use. The term “single-family” shall include one or more related or unrelated adults, as well as the children of any such adults. No Lot shall at any time be used for any commercial, business or professional purpose. No Owner may rent a Lot without the prior written consent of the Board of Directors and in no event may greater than twenty percent

(20%) of the Lots be rented. Notwithstanding the foregoing, however, nothing set forth in this Section shall prohibit: (a) Declarant or Approved Builder from conducting such sales, leasing and promotional activities on any Lot as Declarant shall determine; or (b) the Owner of any Lot from using a portion of a building located on such Lot as an office, provided that such use does not create regular customer, client, or employee traffic to and from such Lot and no sign, logo, symbol, or nameplate identifying such business is displayed anywhere on such Lot.

Section 11.02 Prohibited Activities. No noxious, offensive, unsightly or unkempt activity may be conducted on any Lot. Each Owner of any Lot, his family, tenants, guests and invitees, shall refrain from any act or use of his property which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Lot. Storage or placement of furniture, potted plants, fixtures, appliances, machinery, bicycles, towels, clotheslines, equipment or other goods or chattels on any portion of a Lot which is visible from outside of the Lot is prohibited except as specifically permitted in this Declaration. No nuisance may be permitted to exist upon any Lot. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, may be located, used or placed on any Lot, or any portion thereof.

Section 11.03 Play Equipment. Recreational and playground equipment may not be placed on the front or side yard of any Lot. Recreational and playground equipment may be placed in the rear of Lot, provided that the equipment is placed fifteen (15) feet or more from the rear of the Lot and ten (10) feet or more from either side of the Lot, and provided further that Recreational and playground equipment may be placed on a Lot which is adjacent to the Common Areas only with the prior written consent of the ARC. Materials, colors and other specifications shall be as provided and otherwise approved by the ARC.

Section 11.04 Swimming Pools. No swimming pool shall be constructed, erected or maintained without prior approval of the ARC. In no event shall above ground swimming pools be allowed on any Lot.

Section 11.05 Animals. No Owner may keep any more than three pets on any portion of the Property. Only fully domesticated breeds of dogs and cats are permitted. No Owner or occupant may keep, breed or maintain any pet for any commercial purpose. No Owner or occupant may keep or maintain a dog whose persistent barking causes annoyance or nuisance to any other resident of any other Lot. No animals shall be left unattended while outside. Animals must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. Any feces left upon the Common Areas by an animal must be removed by the owner of the animal or the person responsible for the animal.

No animal determined to be dangerous, in the Board of Directors' sole and absolute discretion, may be brought onto or kept on the Property at any time. The Board of Directors may have removed by the local authorities, without notice to the animal's owner, any animal that presents an immediate danger to the health, safety or property of any person.

Each Owner who keeps an animal on the Property agrees to indemnify and hold the Association and its directors, officers and agents harmless from any loss, claim or liability of any kind whatsoever arising by reason of such animal.

Section 11.06 Antennae; Aerials; Satellite Dishes. No transmission antenna of any kind may be erected anywhere on a Lot without the prior written consent of the ARC. No direct broadcast satellite ("DBS") antenna or multi-channel multi-point distribution service ("MMDS") antenna larger than one (1) meter in diameter may be placed, allowed or maintained upon any Lot. A DBS or MMDS antenna one (1) meter or less in diameter or television broadcast service antenna may only be installed in accordance with Federal Communication Commission ("FCC") rules and the rules and regulations of the Association as authorized by the FCC, as both may be amended from time to time. HAM radios, two way radios and other hobby or professional radio communication transmission equipment are prohibited.

Declarant or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus of any size for a master antenna, cable, or other communication system for the benefit of all or a portion of the Property.

Section 11.07 Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Lot; (2) one approved decorative post light; (3) pathway lighting (low voltage);

(4) street lights in conformity with an established street lighting program for the Property; (5) seasonal decorative lights; or (6) front house illumination of model homes.

Section 11.08 Signs. No sign of any kind or character shall be erected on any portion of any Lot, or displayed to the public on any portion of any Lot, without the prior written consent of the Board of Directors, except for customary name and address signs, one customary "for sale" sign advertising a Lot for sale and any sign required by legal proceedings. The restriction herein stated shall include the prohibition of placement of any sign within a building located on any Lot in a location from which the same shall be visible from the outside and the placement of any sign in or upon any motor vehicle.

Section 11.09 Trash Containers and Collection. All garbage and trash will be placed in covered containers of a type, size and style which are approved by the Board of Directors and subject to rules promulgated by the Association, or as required by the applicable governing jurisdiction, and which will be stored behind screening or inside the Dwelling. No person shall burn rubbish, garbage or any other form of solid waste on any Lot or on Common Areas or within the right of way of any street within the Property. The Association may contract with a waste disposal service for disposal of household waste generated by members on the Property and may promulgate rules related to garbage.

Section 11.10 Vehicles and Parking. The term "vehicles" as used in this Section shall include without limitation automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles. No vehicle may be left upon any portion of the Property except upon a driveway, a designated parking space or within a garage. Without the written approval of the ARC, and with the exception of emergency vehicle repairs or commercial vehicles which are temporarily parked for the purpose of servicing a Lot or the Property, no person shall park any commercial vehicles (including but not limited to any type of vehicle with equipment racks for commercial use), recreational vehicles, mobile homes, trailers, campers, boats or watercraft, or other oversized vehicles, stored vehicles or unlicensed or inoperable vehicles within the Property except within a garage.

All Owner and occupant vehicles must be maintained in good working condition and stored when not in use within the Lot's garage space or driveway. Garage doors must remain closed at all times except for entry and exit by vehicles and except for periods not to exceed two consecutive hours for homeowner related maintenance activities. No conversion of garage space to living space shall be permitted.

The Association may promulgate and enforce additional rules and restrictions regarding vehicles and parking privileges on the Lots and Common Areas.

Section 11.11 Window Air-Conditioners. No air-conditioner may be installed in any window of any building located on any Lot, nor may any air-conditioner be installed on any building located on any Lot so that the same protrudes through any exterior wall of such building.

Section 11.12 Window Treatments. Except as may be otherwise approved in accordance with the Architectural Control provisions contained in Section 7.01, all window treatments visible from the outside of a Lot shall be white or off-white in color. No bed sheets, newspaper, tin foil, or similar materials may be used as window treatments.

Section 11.13 No Subdivision of Lots or Timesharing. No Lot may be further subdivided into any smaller Lot. No Lot shall be made subject to any type of timesharing, fraction-sharing, or similar program whereby the exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 11.14 No Combination of Lots. Contiguous Lots may not be combined together without prior written consent of the Board of Directors. If that the Board of Directors approves such a combination, such combination shall thereafter be deemed to be a single Lot for all purposes of this Declaration, except that notwithstanding the foregoing, the amount of assessments for which such single Lot shall be thereafter liable shall be equal to the total assessments for which all of the Lots which were so combined would have been liable had such combination not taken place.

Section 11.15 Decks, Patio Areas, Stoops, Driveways and Sheds. Grills, patio furniture, potted plants, and other items are permitted on patio areas, subject to local ordinances and any rules promulgated by the Association with respect thereto. Any items placed on front stoops and driveways must comply with any rules promulgated by the Association with respect thereto. Animal pens are prohibited. Detached storage buildings and sheds are allowed,

however, the exterior must be constructed and painted in coordination with the home and design plans must be approved by the ARC pursuant to ARTICLE VIII herein.

Section 11.16 Interpretation. In all cases, the covenants and restrictions herein contained shall be construed and interpreted in a manner which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development and maintenance herein set forth. Subject to the terms of this Section and the Board of Directors' duty to exercise business judgment and reasonableness, the Board of Directors may modify, cancel, limit, create exceptions to, or expand the restrictions contained herein and may create, modify and enforce reasonable rules governing the use of the Property consistent with the law and with other provisions in this Declaration. The Board of Directors shall send notice to all Owners concerning any new or amended restrictions or rules prior to the date that such restrictions or rules go into effect. For this purpose, notice may be sent to each Owner by U.S. mail, hand delivery, electronic telecommunication or publication in a community notice or newsletter delivered or mailed to each Owner.

Section 11.17 Surface Water Management. No Owner or any other person shall do anything to adversely affect the general surface water management and drainage of the Property, including, but not limited to, the excavation or filling in of any Lot, without the prior written approval of the County and any other applicable controlling governmental authority and the ARC, including, but not limited to, the excavation or filling in of any Lot. Provided, however, the foregoing shall not be deemed to prohibit or restrict the initial construction of Improvements upon a Lot or other portion of the Property by Declarant or an Approved Builder in accordance with permits issued by controlling governmental authorities. In particular, no Owner may install any landscaping or place any fill on the Owner's Lot, which would adversely affect the drainage of any contiguous Lot. After initial construction by the Declarant or an Approved Builder, no Owner shall be permitted to reshape or alter the topographical features or area within any drainage easement, nor shall any Owner be permitted to install fences or other Improvements or structures within a drainage easement, including the installation of landscaping, plants, trees or other vegetation, except for low growing grass. The application of herbicide to the portions of the Property within any drainage easement is prohibited.

Section 11.18 Flags. Except for the proper and respectful display of the flag of the United States of America or the State of North Carolina in compliance with applicable law and of a size no greater than four (4) feet wide by six (6) feet long, no Owner may erect or install a flagpole or decorative banner on any portion of a Lot, including freestanding detached flagpoles or banners, and those that are attached to a Lot, without the prior written approval of the ARC.

Section 11.19 Traffic Sight Line Areas. No fence, wall, hedge, tree, shrub planting or any other thing or device which obstructs sight lines at elevations between two and eight feet (2' & 8') above a street is permitted: (i) on any corner Lot within the triangular area formed by the two (2) boundary lines thereof abutting the corner streets and a line connecting them at points twenty-five feet (25') from their intersection, or (ii) on any Lot within the triangular area formed by the boundary line abutting a street, the edge line of any driveway pavement and a line connecting them at points ten feet (10') from their intersection. Notwithstanding the foregoing, with the approval of the ARC, wrought-iron fencing which incorporates vertical bars spaced not less than four inches apart (measured from center to center of each bar) may be placed within either of the aforesaid sight-line areas. The foregoing also does not prohibit construction of any residence or garage at any location permitted by this Declaration, the Plats, or applicable governmental regulations even if the residence or garage encroaches upon either of the aforesaid sight line areas.

Section 11.20 Artificial Vegetation, Exterior Sculptures and Similar Items. Unless otherwise approved by Declarant or the ARC, artificial vegetation or other artificial landscaping, exterior sculpture, fountains, flags, birdhouses, birdbaths and other decorative embellishments or similar items are prohibited at any location upon a Lot which is visible from any street or at ground level from another Lot.

Section 11.21 Pollutants; Hazardous Materials. Without limitation of any other provisions of this Section, no Owner, tenant, or related parties of either, may dump grass clippings, leaves or other debris, detergents, petroleum products, fertilizers, pollutants, or potentially hazardous or toxic substances, in any sewer system, water system, drainage ditch, stream, pond, or lake within the Property, or do anything, or maintain or permit any condition in violation of applicable environmental, toxic or hazardous waste or similar laws, rules, or regulations. Storage of gasoline, heating or other fuels, or of any hazardous or toxic materials upon any Lot is strictly prohibited (except that up to five gallons of fuel may be stored upon a Lot for emergency purposes and operation of lawn mowers and

similar tools or equipment if properly kept and stored in a safe and non-hazardous manner). THE FOREGOING DOES NOT PLACE UPON DECLARANT, THE ASSOCIATION, THE ARC OR ANY OF THEIR RELATED PARTIES ANY OBLIGATION FOR ENFORCEMENT OF ANY APPLICABLE ENVIRONMENTAL, TOXIC, OR HAZARDOUS WASTE OR SIMILAR LAWS, RULES, OR REGULATIONS.

Section 11.22 Owner's Liability for Payment of Association Costs. Each Owner, tenant, and their related parties, are expressly prohibited from doing anything which could or does (i) increase the Association's costs of insurance or result in cancellation or diminution in insurance coverage, (ii) cause damage to any Area of Common Responsibility, including any facilities thereon, or (iii) increase costs of maintenance, repair, replacement, management, operation or discharge of any other obligations of the Association regarding the Area of Common Responsibility, including any facilities thereon, or any other areas maintained by the Association. Regardless of availability of insurance coverage, the Association may charge to each responsible Owner, as a special assessment, all increased costs and all other damages resulting, directly or indirectly, from the acts or omissions of an Owner, tenants, or their related parties, in violation of the foregoing provisions.

Section 11.23 Right-of-Ways. No fence, wall, hedge, tree, shrub, planting or any other thing or device may protrude into any right-of-way located on the Property. Any such obstruction shall be removed by Owner of such Lot from which the obstruction originates within twenty-four (24) hours of written notice of the same. If such Owner does not remove said obstruction, the Association may, but is not required to, remove such obstruction and the costs of the same shall be a special assessment against the non-performing Owner.

## **ARTICLE XII AMENDMENT**

Until the termination of the Development Period, the Declaration may be amended only by Declarant, with the Consent of Approved Builder for so long as Approved Builder owns any Lot or has the right to acquire a Lot, who may amend this Declaration for any purpose. Thereafter, Declarant or the Board, with the Consent of Approved Builder for so long as Approved Builder owns any Lot or has the right to acquire a Lot, may unilaterally amend this Declaration if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rules, regulation, or judicial determination which conflicts therewith, (b) enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, (c) enable an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) to make, purchase, insure, or guarantee mortgage loans on the Lots, (d) enable any governmental agency or private insurance company, including but not limited to HUD and the VA, to insure or guarantee mortgage loans on the Lots. However, any such amendment shall not adversely affect the title to any Owner's Lot unless such Lot Owner consents thereto in writing, or in an amendment related to the merger of the Association into some other owner's association. After the termination of the Development Period, except for items (a) through (d) above, this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of two-thirds (2/3) of the Lot Owners.

Any amendment shall become effective upon the recording with the Register of Deeds of the instrument evidencing such change unless a later effective date is specified therein. If an Owner consents to an amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any challenge to an amendment must be made within six months of the recording of the amendment or such amendment shall be presumed to have been validly adopted and to be valid.

Every Owner, by taking record title to a Lot, and each holder of a mortgage upon any portion of any Lot, by acceptance of such mortgage, hereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided herein.

## **ARTICLE XIII NON-ARBITRAL PROCEEDINGS.**

Except as otherwise limited by this Article XIII, enforcement of these covenants and restrictions pertaining to: (a) actions brought by the Association against Owners (excluding Declarant and Approved Builder) to enforce the provisions of this Declaration (including the foreclosure of liens); (b) the collections of assessments; (c)

proceeding involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it ((a)-(d) hereinafter collectively “Non-Arbitral Proceedings”); may be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots, to enforce any liens created by this Declaration.

## **ARTICLE XIV ARBITRAL PROCEEDINGS.**

Any dispute other than the Non-Arbitral Proceedings described in ARTICLE XIII above, arising out of, or related, in whole or in part, to this Declaration, or the Property or any portion thereof, or improvement thereon, including any claim involving the Declarant or Approved Builder (“Arbitral Proceedings”), shall be resolved in accordance with the procedures described below.

Section 14.01 Negotiation. Before any other action is taken on an Arbitral Proceeding, the parties thereto shall attempt to resolve the dispute through negotiation and the following procedures.

- (a) Alleged Construction Defects. No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Property in connection with, or in anticipation of, any potential or pending claim, demand, or litigation involving such design or construction unless Declarant, Approved Builder, architect, engineer, or landscape professional involved in the design or construction have been first notified in writing and given the opportunity to meet with the Person contemplating the engagement of an expert (the “Claimant”), to conduct an inspection, and to repair deficiencies, if any, identified by the Declarant, Approved Builder, architect, engineer, or landscape professional (the “Respondent”). If, after providing such opportunity to the Respondent, the Claimant elects to retain an expert, the Claimant shall thereafter deliver to the Respondent written notice that includes, at a minimum, (a) a description of the alleged defect; (b) a certification from an architect or engineer licensed in the State of North Carolina that such alleged defect exists, along with a description of the scope of work necessary to cure such alleged defect and a resume of such architect or engineer; and (c) the cost to cure such alleged defect as estimated by the architect or engineer. After delivering the notice required by the preceding sentence the Claimant shall afford the Respondent a reasonable opportunity to cure the alleged defect before initiating any proceedings pursuant to this Section 14.01(a).
- (b) All other Arbitral Disputes. In all Arbitral Disputes other than construction defect claims which are addressed by the preceding Section, the Person asserting or contemplating the assertion of claims (also referred to herein as the “Claimant”) shall provide the Respondent with written notice of the Arbitral Dispute which notice must include the Claimant’s position with regard to facts, circumstances, and law related to the issues to be resolved, together with all documents and evidence that supports such position, and after delivery of such notice the parties shall meet in person and confer for the purpose of resolving a Arbitral Dispute by good faith negotiation.

Section 14.02 Mediation. If the parties cannot resolve their Arbitral Dispute pursuant to the procedures described in the preceding Section 14.01, within such time period as may be agreed upon by such parties, the Claimant shall have thirty (30) days after the termination of negotiations within which to submit the Arbitral Dispute to mediation pursuant to the mediation procedures in the North Carolina Rules Implementing Statewide Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions or to any other rules upon which the parties to the Arbitral Dispute may mutually agree. Persons other than the parties to the Arbitral Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Arbitral Dispute or by witnesses in the course of the mediation shall be kept confidential. There shall be no stenographic, video, or audio record of the mediation process. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof of expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear their own attorneys’ fees and costs in connection with such mediation.

Section 14.03 Final and Binding Arbitration. If the parties cannot resolve their Arbitral Dispute pursuant to the



procedures described in Section 14.02 above, the Claimant shall have ninety (90) days following termination of mediation proceedings (as determined by the mediator) to submit the Arbitral Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association or the Construction Arbitration Rules of the American Arbitration Association, as determined applicable by the arbitrator, the American Arbitration Association or as agreed upon by the parties, as such rules are modified or as otherwise provided in this ARTICLE XIV. If the Claimant does not submit the Arbitral Dispute to arbitration within ninety (90) days after termination of mediation proceedings, the Claimant shall be deemed to have waived any claims related to the Arbitral Dispute and all other parties to the Arbitral Dispute, shall be released and discharged from any and all liability to the Claimant on account of such Arbitral Dispute.

The parties to the Arbitral Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Declarant or Approved Builder shall be required to participate in the arbitration proceeding if all parties against whom a Declarant or Approved Builder would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section 14.03, the arbitrator shall have the authority to try all issues, whether of fact or law.

- (a) Place. The arbitration proceedings shall be heard in the County where the Property is located.
- (b) Commencement and Timing of Proceeding. Arbitration may not be commenced or prosecuted by or on behalf of the Association unless approved by at least seventy-five percent (75%) of the Lot Owners which approval must be accompanied by the approval of a reasonable arbitration budget and the approval and collection of a Special Assessment in an amount equal to the arbitration budget to be levied equally among the Lots and collected before commencement of any action. The arbitrator shall determine whether the Association or a Claimant acting on behalf of the Association has satisfied the requirements of this Subsection (b) before commencing any arbitration and shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay, and in no case greater than sixty (60) days from the date of the demand or if the requirement of this Subsection (b) has not been met find for the Respondent on all claims. If the requirement of this subsection (b) is not met within ninety (90) days of the date the Association requested the Arbitration, the Arbitrator shall dismiss the Arbitration with prejudice.
- (c) Discovery. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) anticipated arbitration exhibits; (v) reports of testing or inspections of the property subject to the Arbitral Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The Respondent shall also be entitled to conduct further tests and inspections as provided in Section 14.01(a) above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- (d) Limitation on Remedies/Prohibition on the Award of Punitive Damages. Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive, consequential, or statutory damages (all such damages being hereby waived by all Owners and the Declarant); however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for under North Carolina Law, or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.
- (e) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.
- (f) Expenses of Arbitration. Each party to the arbitration shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party. Each party to the Dispute shall share

equally all charges rendered by the arbitrator unless otherwise agreed to by the parties. As an express limitation to the foregoing, the arbitrator's award shall include the costs and expenses, including attorneys' fees, incurred by the party the arbitrator determines to have prevailed.

- (g) Enforcement of Resolution. If the parties to an Arbitral Dispute resolve such Arbitral Dispute through negotiation or mediation in accordance with Section 14.01 or Section 14.02 above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if an arbitration award is made in accordance with Subsection (d) and any party to the Arbitral Dispute thereafter fails to comply with such resolution or award, then the other party to the Arbitral Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or award without the need to again comply with the procedures set forth in this Subsection (g). In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation, mediation or award including, without limitation, attorneys' fees and court costs.

Section 14.04 Amendment. This Article XIV shall not be amended unless such amendment is approved by Declarant, Approved Builder, and at least eighty percent (80%) of the percentage of votes of the Association.

## **ARTICLE XV DEVELOPMENT ACTIVITIES**

Section 15.01 Development Activities. Declarant and Approved Builder, and the contractors, sub-contractors, suppliers, vendors, sales agents, realtors and all other related personnel of Declarant and Approved Builder (all such Persons sometime herein referred to as "Development Personnel") have the right to transact any business and conduct any activities reasonably necessary for all construction within, and all development of, the Property, and for the sale or rental of Lots and single family residences and any other improvements to be constructed within the Property (all such construction, development, sales and all related business and activities herein referred to as "Development Activities"), including without limitation as set forth in this Section 15.01.

Section 15.02 Marketing. Declarant and Approved Builder, have the right to maintain models, to have, place and maintain sales and promotional signs, flags, banners and similar promotional devices within the Properties, to conduct from time to time an "open house" and similar events for realtors and other persons which may include without limitation leaving limited access gates (if any) open as hereafter provided, and to use for development, sales and/or promotional purposes all or any part of any Lot, including residence or other improvements located thereon, which is owned by Declarant or Approved Builder.

Section 15.03 Access. IF AND TO THE EXTENT THAT ANY PATROL OR ACCESS SERVICES, STRUCTURES OR DEVICES, INCLUDING ANY CONTROLLED ACCESS GATE, GUARDHOUSE AND RELATED STRUCTURES AND DEVICES ("PATROL/ACCESS DEVICES"), ARE PROVIDED FOR THE PROPERTIES, THEN DURING THE DEVELOPMENT PERIOD, DECLARANT RETAINS FULL AND SOLE AUTHORITY AS TO AND CONTROL OVER THE SAME. DECLARANT'S AUTHORITY AND CONTROL INCLUDES THE RIGHT IN DECLARANT'S SOLE DISCRETION TO DETERMINE THE HOURS, STAFFING AND MANNER OF OPERATION OF ANY AND ALL SUCH PATROL/ACCESS DEVICES, IF ANY. WITHOUT LIMITATION OF THE FOREGOING, DECLARANT IS EXPRESSLY AUTHORIZED DURING THE DEVELOPMENT PERIOD TO DETERMINE IF AND WHEN ANY PATROL/ACCESS DEVICES WILL BE OR BECOME FUNCTIONAL OR OPERATIONAL, INCLUDING THE SOLE RIGHT AND AUTHORITY TO DETERMINE IF AND WHEN ANY CONTROLLED ACCESS GATE WILL BE OR BECOME FUNCTIONAL, AND IF AND WHEN TO LEAVE ANY CONTROLLED ACCESS GATES OPEN FOR ANY PERIODS OF TIME (OR AT ALL TIMES). DURING THE DEVELOPMENT PERIOD DECLARANT MAY ALSO PERMIT, AND AFTER THE DEVELOPMENT PERIOD THE ASSOCIATION AND THE BOARD MUST ALSO PERMIT AND TAKE ALL NECESSARY ACTIONS TO FACILITATE ACCESS TO THE PROPERTY BY ANY DEVELOPMENT PERSONNEL INVOLVED IN ANY DEVELOPMENT ACTIVITIES, BY ANY PROSPECTIVE PURCHASERS, BY ANY SALES AGENTS OR REALTORS AND BY ANY OTHER PERSONS AS DECLARANT REASONABLY DETERMINES IS NECESSARY OR CONVENIENT TO ACCOMMODATE ANY DEVELOPMENT ACTIVITIES. NO PROVISIONS OF THIS DECLARATION, AND NO OTHER STATEMENTS OR COMMUNICATIONS BY DECLARANT OR THE ASSOCIATION, OR ANY RELATED PARTIES OF EITHER, SHALL EVER CONSTITUTE ANY REPRESENTATIONS OR

WARRANTIES BY DECLARANT, THE ASSOCIATION, OR THE RELATED PARTIES OF EITHER, CONCERNING THE HOURS, STAFFING OR MANNER OF OPERATION OF ANY PATROL/ACCESS DEVICES, OR CONCERNING ANY SAFETY OR SECURITY BENEFITS OR PROTECTION REGARDING ANY OF THE SAME, ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES BEING HEREBY EXPRESSLY DISCLAIMED.

Section 15.04 Construction. Development Personnel may be required to and are hereby specifically authorized to, engage in construction activities, to store equipment or materials, to create accumulations of trash and debris, and to otherwise engage in activities and create conditions related to its development of the Property, including the construction and sale of residences and any other improvements in the Property, upon multiple Lots, Area of Common Responsibility and any other properties within the Property, excluding any Lot after the initial sale of the Lot to an Owner other than Declarant or Approved Builder, and occupancy of the Lot by the said other Owner or their tenant. Without limitation of the foregoing, Declarant is specifically authorized to engage in any of the foregoing activities and any other Development Activities at any times and on any days (including Sundays and holidays) as Declarant or deems necessary.

Section 15.05 Use of Common Areas. During the Development Period, Declarant's and Approved Builder's Development Personnel may use for any Development Activities, without charge, any Area of Common Responsibility (including improvements thereon).

Section 15.06 Construction Facilities. Declarant or Approved Builder may permit temporary toilet facilities, sales and construction offices and storage areas to be used in connection with the construction and sale of residences at such locations as Declarant or Approved Builder may direct. Declarant may also authorize usage of garages as sales offices during the Development Period. At or prior to the date of the sale of a Lot to an Owner other than Declarant or Approved Builder, any garage appurtenant to the residence located on the Lot used for sales purposes must be fully reconverted to a garage, and any such other Owner or their successors in title shall be responsible for completion of the reconversion to any extent the reconversion is not completed as aforesaid.

Section 15.07 Parking. Development Personnel may park vehicles at any locations within or in the vicinity of the Properties as is necessary to conducting of any Development Activities, excluding the private driveway, if any, as to any residence which is owned by an Owner other than Declarant or Approved Builder and which is occupied by the Owner or their tenant.

Section 15.08 Construction Regulations. Declarant may establish any reasonable regulations as to Owners and tenants, as to the Association, the Board, the ARC, as to any related parties of any of the foregoing, as to any other Person, or any of them, which Declarant deems appropriate to avoid hindrance or interference with any Development Activities, including limiting or denying access to areas of the Property, designating temporary dumping sites, maintenance of metal buildings or structures, and use of Common Areas and improvements thereon in connection with its Developmental Activities.

Section 15.09 Time Period. Except as stated in Section 15.05 all provisions of this ARTICLE XV apply to each Lot owned by Declarant or Approved Builder until completion of the initial sale of the last Lot in the Property, whether or not completion of the initial sale occurs during or after the Development Period.

Section 15.10 Liability. ABSENT INTENTIONAL AND WILLFUL MISCONDUCT, DECLARANT, ITS RELATED PARTIES, APPROVED BUILDER, AND ALL OTHER DEVELOPMENT PERSONNEL ARE NOT LIABLE TO ANY OWNER OR TENANT, OR TO THE ASSOCIATION OR ARC, OR TO ANY RELATED PARTIES OF ANY OF THE FOREGOING, OR TO ANY OTHER PERSON FOR ANY CONSEQUENCES OF THE REASONABLE CONDUCTING OF ANY DEVELOPMENT ACTIVITIES.

## ARTICLE XVI MISCELLANEOUS

Section 16.01 Failure of Enforcement. If that the Association fails to enforce compliance with any of the provisions of this Declaration by the Owner of any Lot, then the Owner of any other Lot shall have the right to file an action in the Superior Court of the county where the Property is located for an order from such Court requiring that the Association enforce such compliance; provided, however, in no event shall the Board of Directors, or any

officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

Section 16.02 No Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

Section 16.03 Duration. This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from and after the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of twenty (20) years until the recordation of an instrument of termination within two (2) years of the expiration of the initial twenty-year period or any extension thereof, such instrument having been executed by a minimum of sixty-seven percent (67%) of the record Owners of the Lots.

Section 16.04 Notices. Any notice required or permitted to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mail, postage prepaid, addressed to the member or Owner to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of the Lot owned by such member. The date of service shall be the date of mailing. The address of Declarant, Approved Builder, or the Association shall be the address of its respective registered agent on file with the Secretary of State of North Carolina. The date of service shall be the date shown on the return receipt. Rejection or other refusal to accept shall be deemed to be receipt of the notice sent.

Section 16.05 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 16.06 Successors to Declarant. In no event shall any person or other entity succeeding to the interest of Declarant by operation of law or through purchase of Declarant's interest in all or any portion of the Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of Declarant.

Section 16.07 Right to Develop. Declarant, Approved Builder, and their respective employees, agents, and designees shall have a right of access, use, and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in their sole discretion, and Declarant, Approved Builder, and their employees, agents, and designees shall have a right to complete construction, repair and maintenance of Lots. Every Person that acquires any interest in a Lot or in the Property acknowledges that the Property is a planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property, or (b) changes in the plan as it relates to property. Each Owner acknowledges, understands and covenants to inform its lessees and all occupants of its Lot that the Property and areas adjacent to the Property are subject to further development and expansion, and therefore, there may be certain inconveniences during any period of construction, and each Owner as well as any of its tenants or occupants acknowledges that such construction and development is permitted by this Declaration, notwithstanding the limitations in ARTICLE XI and similar provisions, and waives all claims with respect to such inconveniences, sights, sounds, smell and conditions associated with such construction. Each Owner agrees that if Owner or Owner's employees, lessees, invitees, clients, customers, guests, contractors, or agents enter onto any area of construction, they do so at their own risk, and that the Declarant, Approved Builder, and their contractors, agents or employees shall not be liable for any damage, loss or injury to such person.

Section 16.08 Liability Arising from Conduct of Owners. Each Owner, their tenants, and their respective related parties must indemnify and keep indemnified, and hold harmless, Declarant, Approved Builder, the Association, and their related parties from and against all claims, damages, suits, judgments, court costs, attorney's fees, attachments, and all other legal actions caused through the willful or negligent act or omission of an Owner, the Owner's tenants, or their respective related parties.

Section 16.09 Security Measures. Security is the sole responsibility of local law enforcement agencies, including, without limitation, the Sheriff's Department of the County, and individual Owners and their tenants, and their respective related parties. Security Services may be provided at the sole discretion of the Board of Directors. The provision of Security Services at any time will in no way prevent the Board from thereafter discontinuing, or from temporarily or permanently modifying, terminating, or removing, any Security Services.

DECLARANT, APPROVED BUILDER, THE ASSOCIATION, AND THEIR RELATED PARTIES ARE NOT LIABLE FOR, AND EACH OWNER, THEIR TENANTS, AND THEIR RESPECTIVE PARTIES MUST INDEMNIFY, KEEP INDEMNIFIED, AND HOLD DECLARANT, APPROVED BUILDER, THE ASSOCIATION, AND THEIR RELATED PARTIES HARMLESS AT ALL TIMES FROM, ANY INJURY, LOSS, OR DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, ANY INJURY OR DAMAGES CAUSED BY THEFT, BURGLARY, TRESPASS, ASSAULT, VANDALISM, OR ANY OTHER CRIME, TO ANY PERSON OR PROPERTY ARISING, DIRECTLY OR INDIRECTLY, FROM THE PROVIDING OR FAILURE TO PROVIDE, ANY SECURITY SERVICES, OR THE DISCONTINUATION, MODIFICATION, DISRUPTION, DEFECT, MALFUNCTION, OPERATION, REPAIR, REPLACEMENT, OR USE OF ANY SECURITY SERVICES.

DECLARANT, APPROVED BUILDER, THE ASSOCIATION, AND THEIR RELATED PARTIES HAVE NO DUTY OBLIGATION, OR RESPONSIBILITY OF ANY KIND WHATSOEVER TO WARN, ADVISE, OR IN ANY OTHER MANNER INFORM ANY OWNERS, TENANTS, THEIR RELATED PARTIES, ANY OTHER RESIDENTS OR OCCUPANTS OF ANY LOT, ANY LAW ENFORCEMENT AGENCY, OR ANY OTHER PERSON AS TO ANY ALLEGED, SUSPECTED, OR KNOWN CRIMINAL ACTIVITIES OF ANY KIND, CRIMINAL HISTORY OR BACKGROUND OF ANY PERSON, OR CRIMINAL INVESTIGATIONS BY LAW ENFORCEMENT AGENCIES OR BY ANY OTHER PERSON (ALL SUCH MATTERS, ACTIVITIES, AND INVESTIGATIONS HEREIN REFERRED TO AS "CRIMINAL MATTERS"), REGARDLESS OF WHETHER THE CRIMINAL MATTERS INVOLVE THE PROPERTY, OTHER AREAS IN THE VICINITY OF THE PROPERTY OR ANY OTHER PLACE OR LANDS. THE ASSOCIATION MAY (BUT HAS NO OBLIGATION TO) FROM TIME TO TIME TRANSMIT INFORMATION CONCERNING CRIMINAL MATTERS TO OWNERS, TENANTS, OTHER OCCUPANTS OF LOTS, TO ANY LAW ENFORCEMENT AGENCIES, OR TO ANY OTHER PERSON WHICH THE ASSOCIATION'S OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, AND OTHER RELATED PARTIES IN THEIR SOLE DISCRETION DEEM ADVISABLE.

Each Owner and tenant by acceptance of any right, title, or interest in any Lot, and every Owner, tenant, and occupant of a Lot by virtue of such occupancy, hereby consents, on their behalf and on behalf of their respective related parties, and on behalf of all other Persons coming upon a Lot or Area of Common Responsibility at their invitation, or with their consent or permission, to any such disclosure of information. Any such disclosure of information does not in any way constitute an undertaking to do so in the future, either as to the Criminal Matters then involved or as to any other current, past, or future Criminal Matters, including, in particular, but without limitation, the provisions of this Section regarding indemnity of Owners, their tenants, and their respective related parties.

Section 16.10 Termination of Rights of Approved Builder. The rights of Approved Builder to take, approve or consent to actions under this Declaration, the Articles of Incorporation, or the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that Approved Builder no longer owns any portion of the Property and no longer has the option to acquire any portion of the Property; or (b) the date of recording by Approved Builder in the Registry of Deeds a written instrument terminating all of Approved Builder's rights hereunder.

Section 16.11 Enforcement of Declaration Terms. So long as Declarant owns any Lot, Declarant shall have the right to enforce any of the provisions of this Declaration, the Articles, and the Bylaws that are intended to be for the benefit of Declarant. However, none of the provisions of this Declaration shall obligate, or be construed to obligate, Declarant, or its agents, representatives or employees, to undertake any affirmative action to enforce the provisions

of this Declaration, or any provision hereof or thereof, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof or thereof.

[SIGNATURE PAGES FOLLOWS]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officers on the day and year set forth below.

ZEBULON MINI-STORAGE GROUP, LLC  
a North Carolina limited liability company

By: DM  
Name: David M. Perry  
Its: Managing Member

STATE OF NORTH CAROLINA  
COUNTY OF Wayne

I certify that the following person personally appeared before me this day, the 14<sup>th</sup> of Dec, 2020, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: David M. Perry, who is the managing member of Zebulon Mini-Storage Group, LLC.

Witness my hand and official seal, this the 14<sup>th</sup> day of Dec, 2020.

Notary Public: Amanda R Price  
Printed Name: Amanda R Price  
My commission expires: Sept 28, 2022

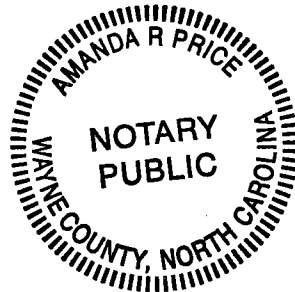


EXHIBIT "A"

BEING ALL OF that property including but not limited to Lots 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 53A, 54, 54A, 55, 55A, 56, 57, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 71R, 72, 72A, 73, 73A, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, and Offsite Reserve "A" as shown and described on a plat entitled "Settlers Pointe Section Four" prepared by R. Daniel Butler, PLS., and recorded in Plat Cabinet P, Slides 25-I and 25-J, Wayne County Registry.