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WAYNE COUNTY, NC  
CONSTANCE B. CORAM REGISTER OF DEEDS

**BK 3742 PG 701 - 750**

**After Recording Return to:**  
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**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
DRAKE ESTATES**

**WAYNE COUNTY, NORTH CAROLINA**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR THE STATE OF NORTH CAROLINA.**

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

NPRAL1:1946341.6

Submitted electronically by "Nexsen Pruet, LLC"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Wayne County Register of Deeds.

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**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR DRAKE ESTATES  
WAYNE COUNTY,  
NORTH CAROLINA**

THIS **DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS** (this "Declaration") is made by **ENC MAR-MAR LLC**, a North Carolina limited liability company (the "Declarant"). Brock Works LLC, a North Carolina limited liability company, ("Brock Works") joins in this Declaration for the purposes as set forth below.

**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 "Declarant Property");

WHEREAS, Brock Works is the owner of certain real property lying and being in Wayne County, North Carolina, currently having the address of 102 and 104 Drake Village Drive, Goldsboro, NC, and such property is shown on the legal description attached hereto as **Exhibit B**, incorporated herein (the "Brock Works Property"), having been conveyed to Brock Works by Declarant pursuant to that certain North Carolina Special Warranty Deed recorded at Book 3737, Page 714, Office of the Register of Deeds for Wayne County, North Carolina (the "Wayne County Registry")

WHEREAS, Declarant and Brock Works intend to impose on the Declarant Property and the Brock Works Property (together, 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;

WHEREAS, the Drake Estates 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.

NOW THEREFORE, Declarant and Brock Works 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 Georgia limited liability company (and SDH Raleigh LLC also be referred to herein as the "**Initial Builder**"), 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, but only with the consent of the Initial Builder(s) during the "**Initial Builder Period**" (as hereafter defined). Rights of Approved Builder hereunder shall apply only to the Lots within the Property which are acquired by such Approved Builder and

such rights (including any easements granted to the Approved Builder) shall only exist and benefit such Approved Builder for the period of time that the Approved Builder hereunder is an 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 Common Area, together with such other 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 Drake Estates Homeowners Association, Inc., as the same may be amended from time to time.

**"Association"** shall mean Drake Estates 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.

**"Common Area"** shall mean all real property and personal property, including easements, rights, and improvements therein, wherever located, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners and occupants of Dwellings or which may otherwise be designated as "Common Area" herein or on a Plat by the Association or Declarant during the Development Period.

**"County"** shall mean and refer to Wayne County, North Carolina, a municipal corporation.

**"Declarant"** shall mean ENC Investment Holdings, 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 Drake Estates, as the same may be hereafter amended in accordance with the terms hereof.

**"Development Period"** shall mean, subject to the following sentence, 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, but only with the consent of the Initial Builder during the Initial Builder Period, relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument providing therefor 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.

**"Governmental Approval(s)"** means and includes, without limitation, any and all approvals, authorizations, licenses, permits, consents and exemptions issued or granted (or required to be issued or granted, as the case may be and if applicable) by any Governmental Authority.



**"Governmental Authority(ies)"** means and includes, without limitations, any of the city of Goldsboro, Wayne County, the State of North Carolina, the United States of America, and all other governmental entities and quasi-governmental entities that have jurisdiction over the Property (or any part thereof) and all applicable departments, divisions, sections, branches, agencies, and any other subdivisions or the like of any of the preceding.

**"Initial Builder"** means SDH Raleigh LLC, a Georgia limited liability company authorized to transact business in the State of North Carolina.

**"Initial Builder Period"** means the period of time that Initial Builder owns any Lot except the Initial Builder Period shall terminate and expire (without any reinstatement at any time for any reason) as and when provided in the Declarant Building Agreement (defined below) and as confirmed by the IBP Termination (defined below). In confirmation of the termination of the Initial Builder Period, Declarant shall have the right to record in the Register of Deeds an instrument confirming such termination and/or expiration of the Initial Builder Period (**"IBP Termination"**). The unilateral recording of such IBP Termination by Declarant (and provided that such IBP Termination includes a certification by Declarant that Declarant sent a copy of such IBP Termination to the Initial Builder in accordance with the notice provisions of the Declarant Builder Agreement) shall be conclusive evidence of the termination and/or expiration of the Initial Builder Period (as of the recording of same) without the need for any further action by any party, unless an instrument disputing such termination has been recorded or filed in the Register of Deeds by the Initial Builder within fifteen (15) days following the recordation of the IBP Termination. Initial Builder and Declarant agree that the right of Declarant to record the IBP Termination shall be governed and controlled by a separate written agreement or agreements entered into between the Initial Builder and Declarant (or their permitted successor or assigns thereunder) prior to the date hereof (as same may hereafter be amended in writing signed by each of Initial Builder and Declarant, or their permitted successor or assigns thereunder) (collectively, the **"Declarant Builder Agreement"**). The Declarant Builder Agreement shall be solely for the benefit of Declarant and Initial Builder (or their successors or assigns permitted under the Declarant Builder Agreement) and Declarant and Initial Builder hereby agree that the Declarant Builder Agreement shall control as between Declarant and Initial Builder (and their successors or assigns permitted under the Declarant Builder Agreement) to the extent of any conflict between (i) the Builder Agreement and (ii) this Declaration, the Articles of Incorporation and/or the Bylaws. Upon the termination of the Initial Builder Period, the Initial Builder shall cease to be an Approved Builder. No party shall have the right to review the Declarant Builder Agreement or the right to know or have disclosed to it the terms thereof, on account of this Declaration or otherwise.

**"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 solely for marketing and sales purposes (a **"Model Home"**) 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. Model Homes are displayed for illustrative purposes only, and, without limitation to any other express disclaimers hereunder or otherwise, such display shall not constitute an agreement or commitment on the part of Declarant or any Approved Builder to deliver a Dwelling in conformity with any Model Home, and any representation or inference to the contrary is hereby expressly disclaimed.

**"Legal Requirement(s)"** shall mean and include, without limitation, any law, ordinance, regulation, building code, or requirement of any Governmental Authority or agency having jurisdiction over, as applicable, the Property or any portion thereof or, any Person, and such term includes, without limitation, the terms, conditions, requirements and obligations of any applicable Governmental Approvals.

**"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 or attached residence for a single family, as shown on a 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, limited liability company, trust, partnership or any other legal entity.

**"Plats"** shall mean all plats for any portion of the Property (as same may be modified, terminated or amended and restated as provided herein), and any amendments to such plats, which are hereafter recorded in the Register of Deeds' plat book records by, at the direction, or with the consent of Declarant or the Association, and shall also include any plats, or amendments thereto recorded by, at the direction, or with the consent of the Declarant or the Association for the purpose of subjecting any of the Additional Property to this Declaration.

**"Property"** shall have the meaning ascribed to it hereinabove. Except as otherwise expressly designated herein, the Property shall be deemed to include any appurtenances thereto or Governmental Approvals applicable thereto (to the extent assignable and not specifically reserved to any party herein).

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

**"Resource Conservation Area"** shall mean protected areas that may include, but are not limited to natural areas; streams buffers; wetlands; undisturbed forested areas; wildlife habitat areas, and historic and cultural sites. No representation or warranty is made as to the existence or presence of any Resource Conversation Area at the Property and, without limitation, any part of the Property which may from time to time be identified or stated to be a Resource Conversation Area, or similar designation, may be reconfigured, modified, supplemented, reduced or eliminated, in Declarant's sole discretion during the Development Period (but only with the consent of the Initial Builder during the Initial Builder Period).

**"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 (to the extent permitted hereunder).

**"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. Without limitation, under no circumstance shall the Association or Declarant or any other party be responsible for or required to provide or finish, any Security Services.

**"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 and Brock Works, for itself and its successors and assigns, does hereby submit the Property and the Lots located thereon 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 or any applicable Plats, including, but not limited to, the lien provisions set forth herein (except as otherwise provided herein and subject to the terms hereof). 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 (except as otherwise provided herein and subject to the terms hereof).

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 (but shall not be required to), at any time and from time to time, during a period of ten (10) 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 (except as otherwise provided herein and subject to the terms hereof), 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 (except as otherwise provided herein and subject to the terms hereof).

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 (or any other Person), 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 (without limitation to Declarant's other rights hereunder). The Association shall have the right and authority (but not the obligation) 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 any other Person, 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 (but only with Initial Builder consent during the Initial Builder Period), for the purpose of removing any portion of the Property from the coverage of this Declaration without the consent of any other Person (which term includes, without limitation, the Association) other than the Owner of the property to be withdrawn, if not the Declarant. This provision includes Declarant's right to deed over property (or any interest therein) to any governmental entity or utility provider 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.

Section 2.06 Public Dedication. The Association may dedicate (or convey) or grant easements across portions of any of the Common Area to any Governmental Authority (including, without limitation, Wayne County, the North Carolina Department of Transportation or any subsidiary or agency thereof), or to any private, public or quasi-public utility company or authority. During the Development Period, Declarant shall have the right, power and authority to unilaterally cause the Association to make any such dedication or conveyance to any Governmental Authority or to any private, public or quasi-public utility company or authority and shall have the right, power and authority, but not obligation, to execute documents and take such actions in the name of the Association for such purposes in all cases without the consent or action of any Person. Notwithstanding anything to the contrary, upon the dedication and acceptance of any Common Area by any governmental or quasi-governmental authority, neither the Association (nor the Declarant, if it had any) shall have any further obligation with respect thereto (unless expressly reserved or thereafter agreed to).

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

Section 3.01 Easements over Lots. The Lots shall be subject to, and Declarant, and Brock Works (to the extent applicable), does hereby grant, the following non-exclusive perpetual and temporary easements for the enjoyment of Declarant (during the Development Period), the Association, any Approved Builder (during such period of time that

such Approved Builder is designated as such), the Initial Builder (during the Initial Builder Period), 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 and such easements shall be deemed granted and/or conveyed to the Association (unless otherwise indicated thereon) without the need for further conveyance or granting language in a separate instrument; subject, however, to any express right of any Person hereunder or to modify the same from time to time.
- (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 hereby reserves and establishes 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 (and without any representation as to the existence or provision of any of same), 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, or the Board shall have the right to grant such easement. The Board of Directors, without a vote of the Owners but with Declarant's consent during the Development Period, 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 (if any) 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 or stormwater controls or systems 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 systems and related facilities serving the Property or any portion thereof. This easement shall include, without limitation, 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 reserves and establishes easements across the Property to maintain and carry on, upon such portion of the Property as Declarant (or Approved Builder, but only with the Declarant's prior consent in each instance, which consent shall not be unreasonably withheld conditioned or delayed) 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 but only with the prior consent of Declarant in each instance, which consent shall not be unreasonably withheld conditioned or delayed), 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 reasonably intended to become a part of the Property or a Common Area (or dedicated to the public or any utility company for the benefit of all or any portion of the 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, 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 (if any) 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 on the Lots or property owned by Declarant and Approved Builder (but not on the other's property), respectively, as model residences and sales offices. This Section shall not be amended without the written consent of Declarant and/or Approved Builder (as applicable) until the rights of Declarant and/or the Approved Builder (as applicable) have terminated as provided in this Declaration.
- (i) Encroachments and Overhangs. The Lots shall be subject to an easement for encroachments by walls, fences, driveways, landscaping, or other structures on adjacent Lots so long as such encroachment is no greater than three (3) feet (measured at a right angle to the property line) at any point and no more than two-hundred (200) square feet in the aggregate and caused unintentionally during initial installation or during repair or caused by shifting, settlement, or movement of any such structure.
- (j) Emergency Access Easements. The Property may be subject to one or more easements for pedestrian and vehicular access, ingress, egress, or regress in favor of emergency services such as the fire or police department, which easements, if any, shall be designated on the Plat(s).

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, in favor of the Declarant, the Association, or any Approved Builder, and their successors-in-title. 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 or utility or drainage improvement or facility may be installed under an existing structure (except for roadways) or so close to a structure (except for roadways) 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 (or any improvements or facilities constructed pursuant to such easement), the Declarant, Approved Builder or Association making such request, agrees to bear the expense of relocating the easement (or any improvements or facilities constructed pursuant to such easement), and when the relocation of such easement (or any improvements or facilities constructed pursuant to such 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 for the exclusive use of such portions of the Common Areas by Declarant (and any permitted designee, Declarant's sole discretion) and Approved Builder (but only with Declarant's prior consent in each instance, not to be unreasonably withheld, conditioned or delayed) 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 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 any permitted designee, in Declarant's sole discretion) and Approved Builder (but only with Declarant's prior consent in each instance, not to be unreasonably withheld, conditioned or delayed) to maintain and carry on, upon such portion of the Property as Declarant or Approved Builder may deem necessary or desirable, such facilities and activities as may reasonably be requested by the Declarant or Approved Builder (but only with Declarant's prior consent in each instance, not to be unreasonably withheld, conditioned or delayed), 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, 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 (if any) constructed or installed in, on, under, or over the Property; the right to carry on sales and promotional activities on the Property consistent with this Declaration; and the right to construct and operate signs and construction trailers.
- (d) Approved Builder's Marketing Signage. Approved Builders shall have the right during the period that they are Approved Builders to maintain limited promotional signage in compliance with applicable laws at the Property and no consent of the Association or Declarant is required therefor (provided that the Association or Declarant may relocate such signage in order to exercise any rights hereunder or comply with any obligation hereunder).

Section 3.03 Any direct or indirect references to services, activities, facilities, improvements or amenities (or to easements for or related to any of the preceding) in this Declaration or (or on any Plat), if any, such as, without

limitation, the provision of specific utilities, drainage systems and storm water controls, shall not impose any obligation upon Declarant or Association to provide the same (except as expressly provided herein, if at all) or be deemed a representation, warranty or covenant on the part of any party to provide or cause to be furnished any of same or a representation that any of same will now or in the future exist or be provided at the Property or by the Association or Declarant (as applicable).

Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Declarant (with respect to Lots or any portion of the Property owned by Declarant) and Approved Builder (with respect to Lots owned by Approved Builder), and their respective agents, employees, successors, and assigns, are permitted to maintain and carry on any such Lot owned by Declarant or Approved Builder (as applicable) such facilities and activities as may be reasonably required, convenient, or incidental to the development, construction, completion, improvement, and/or sale of Declarant's or Approved Builder's Lot(s) (or, in the case of Declarant, any Property it owns), 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. For clarification, Approved Builder shall not have the right to install, construct or operate any development, sales and construction trailers and offices, signs and models, Model Homes or any other facilities, or engage in any other activities, upon any Lot(s) or property owned by the Declarant or Association without the consent of Declarant in its sole but reasonable discretion.

The rights under this Section 3.03 to maintain and carry on such facilities and activities will include specifically the right to use a Lot (owned by the party exercising such right) as a model and as offices for the sale or lease of Lots and for related activities.

Section 3.04 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, the 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 (without imposing any obligation or liability on the Association for not enforcing the same or liability therefor), and the performance of such other duties and services as are expressly required of the Association hereunder or as the Board of Directors shall deem appropriate.

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, but only with Initial Builder consent during the Initial Builder Period, may so designate by notice in writing delivered to the Association, or (ii) the termination of the Development Period. 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 Class A membership. Under no circumstances shall the Declarant be responsible or liable for the actions of the Association or Board of Directors including, without limitation, due to Declarant's election or appointment of same, including, without limitation, if Declarant appoints and elects officers, employees or other personnel of any Approved Builder to the Board of Directors. To the extent any matter hereunder requires a Class A vote or any applicable law requires a vote of all owners (regardless of class or other matters), the Class B Member shall be deemed for such purposes to be a Class A Member and to have the number of Class A votes it would have as a Class A Member based on the number of Lots it owns.

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 (other than the Class B Member which may not be suspended for any reason) 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) or the Declarant and any of its Related Parties (whether for appointing such Board or otherwise) 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 of such party in their capacity as a member of the Board of Directors or officer of the Association, and shall be liable to the Association only for any acts or omissions by such Person (but not any other Person) 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 (including, without limitation, any and all improvements thereon) and to transfer or assign any and all associated rights, easements, Governmental Approvals, liabilities and obligations and, the Association shall expressly assume any of same to the extent required by Declarant. Unless otherwise expressly reserved by Declarant, the transfer or conveyance of any Property to the Association, as Common Area or otherwise, shall be deemed the assignment and assumption of all Governmental Approvals (and obligations and liabilities arising



thereunder) and the Association shall be deemed to have assumed the same, whether or not such Governmental Approvals (and/or obligations or liabilities thereunder) are referenced in the instrument conveying or assigning or transferring the same. All portions of the Property which the Declarant transfers to the Association shall thereafter constitute Common Area unless otherwise designated by Declarant. 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 any and all Permitted Exceptions (as hereafter defined) recorded with the Register of Deeds, irrespective of whether the deed of conveyance shall make a specific reference to such Permitted Exceptions. COMMON AREAS SHALL BE CONVEYED TO THE ASSOCIATION WITHOUT WARRANTY – “AS IS” AND “WHERE IS”. “Permitted Exceptions” shall include any and all real estate taxes and assessments for the year of such conveyance and subsequent years not yet due and payable; any matters that are created by or arise from the act or acquiescence of the Association or an Approved Builder; any and all conditions, covenants, declarations, easements, reservations, restrictions or other matters of record; any and all Legal Requirements including without limitation, any zoning and governmental ordinances, regulations, restrictions, and conditions; and any and all matters or conditions which would be disclosed or revealed by an accurate survey and inspection of such Common Area.

**Section 5.02 Limited Common Areas.** Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use of primary benefit of Owners. By way of illustration and not limitation, Limited Common Areas may include patio areas, recreational facilities, landscaped areas, and other portions of the Common Area (if any). All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be an Association expense allocated, in any reasonable manner established by the Association, among the Owners.

Limited Common Areas may be designated as such in the deed conveying such area to the Association or on the Plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots, so long as Declarant has a right to subject additional property to this Declaration pursuant to ARTICLE II, and provided further that any assignment that would have a material adverse effect on Lots owned by Declarant or an Approved Builder or Lots an Approved Builder is under contract to purchase from Declarant will require the consent of Declarant or such Approved Builder (whichever owns such Lots), which consent shall not be unreasonably conditioned, delayed or denied.

After recording the initial deed conveying such area to the Association or the Plat relating to such Common Area, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Declarant during the Development Period and thereafter by the Board of Directors and the vote of Voting Members representing a majority of the total votes in the Association. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with ARTICLE II, any such assignment or reassignment shall also require Declarant's written consent and, the Initial Builder's consent, but only during the Initial Builder Period.

**Section 5.03 Resource Conservation Areas.** The Declarant or the Association may (but shall not be required to) delineate portions of the Common Areas as Resource Conservation Areas. Use of portions of the Common Areas designated as Resource Conservation Areas (if any) will be limited or prohibited as provided in the delineation.

A failure of Declarant or the Association to designate a portion of the Common Areas as a Resource Conservation Area will not relieve any Owner of the obligation to comply with all laws, rules, and permits and other Legal Requirements.

As part of any Resource Conservation Area, the Association shall not alter any portion thereof designated on a Plat as a “Tree Coverage Area” (if any) and shall allow it to remain in its natural and undisturbed state, and no Person shall remove any trees or other vegetation within such area or take any other action that would disturb or alter the undisturbed condition or nature of such area, except that the Association has the right to remove dead or diseased trees and to take other actions with the approval of the County (if required).

Section 5.04 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 for their intended purposes 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 or any Plat 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 of 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 (or for any other reasonable reason as determined by the Board of Directors in good faith), 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 5.05 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 of available proceeds from such authority or reserves then held at the time of such condemnation or eminent domain) 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 5.06 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 to the extent of insurance proceeds received therefor or reserves then held at the time of such casualty, unless it shall be decided, within ninety (90) days after the occurrence of casualty, by at least sixty-seven percent (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 (after application to any costs necessary to secure and cause such damages areas to be safe and in a condition otherwise determined by the Board of Directors) 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. 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 but with the approval the Declarant during the Development Period, levy special assessments to cover the shortfall.

Section 5.07 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, and, if during the Development Period, the consent of Declarant and, for so long as Approved Builder owns any Lot, the consent of Approved Builder. Notwithstanding anything to the contrary in this Section, however, the Association, acting through the Board of Directors (with the consent of the Declarant during the Development Period and, the Initial Builder, but only during the Initial Builder Period), 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 5.08 No Partition. Except as otherwise expressly provided herein (and without limitation to any express rights granted hereunder), 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 5.09 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 (subject to the following sentence), by acceptance of a deed or other conveyance for a 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. No assessment created pursuant to this Article VI may be levied against Declarant during the Development Period or the Initial Builder during the Initial Builder Period.

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 recorded before the docketing of the claim of lien in the office of the clerk of court and the lien of any mortgage recorded prior to the recording of this Declaration (except as otherwise agreed by such mortgagee); and (3) the lien of any secondary purchase money Mortgage covering the Lot recorded before the docketing of the claim of lien in the office of the clerk of court, 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 that 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 and for any other cost or expense incurred by the Association or the Board for its operations and activities permitted or contemplated hereunder (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 any of the following to the extent incurred: 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 any Lot on the date that such Lot first becomes an Improved 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) or conduct 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 as set from time to time by Declarant or the Board of Directors of the Association. Such amount shall not be greater than one half (1/2) of the total amount of the Annual Assessment which shall have been levied against Improved Lots for the calendar year in which such transfer of title takes place. The Association may commingle 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. The Approved Builder shall 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, service fees, consulting 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 available at law or equity (or otherwise provided hereunder) 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 (if any), and/or (ii) use, employ or receive the benefits of any Common Areas (if any), 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 the right of ingress, egress, or regress to or from their Lot as a remedy against such Owner under this paragraph.
- (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. Notwithstanding any other provision contained in this Declaration, as long as the Initial Builder owns any Lot during the Initial Builder Period or Declarant owns any Lot during the Development Period, no Assessments shall be levied against Lots owned by Initial Builder during such Initial Builder Period or against Lots owned by Declarant during the Development Period.

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. The funding or payment by Declarant from time to time of any cost or expense or shortfall or deficit of the Association (or the provision of services by Declarant, if any from time to time) shall not be construed to impose any obligation on Declarant to make any future or further funding or payment or to provide any future service.

**Section 6.15      Failure to Assess.** The failure or delay 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, if applicable, 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. If the initial assessments have not been fixed (or notice thereof has not been given to the Owners), then the Owners shall commence to pay assessments at such time as the Board initially fixes such assessments or gives notice thereof to the Owners.

## **ARTICLE VII      MAINTENANCE OF LOTS**

**Section 7.01      Association's Maintenance Responsibility.** Except as may be specifically provided otherwise below, the Association shall only maintain the Area of Common Responsibility, which may include, from time to time, the following: (a) any landscaping, grass, plants, shrubs, trees, including but not limited to areas within any right of ways adjacent to Common Areas or Lots (if any); (b) privately owned utility lines owned by the Association within any Common Area (but not any within the Lots or exclusively servicing a particular Lot); (c) perimeter fencing within any Common Area (if any) or if installed by the Association or Declarant on any Lot (if any); (d) brick retaining walls located on Common Areas or their perimeter, (e) mail kiosks or centers, if any; (f) all storm water detention/retention ponds and storm water drainage facilities serving the Property in accordance with any stormwater maintenance agreement in which the Association is a party, and any gate, fence, wall, or other enclosure surrounding said storm water detention/retention ponds, regardless of whether the same are located on a Lot or Common Area; (g) private streets, if any, and; (h) street lights located in any right of ways adjacent to Common Areas or Lots (including, but not limited to, the utility costs for such street lights), if any. If 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.

Water may be provided to the Lots through a single connection to municipal services, a master meter, and distribution and collection lines maintained by the Association between municipal lines as individual Lots. Costs incurred by the Association arising out of, or related to, municipal use or similar charges, the maintenance, repair, or replacement of, distribution or collection lines and all related matters shall be included as part of the Annual Expenses. The Association may promulgate reasonable rules and regulations regarding the consumption and use of such utilities. The Association shall have the right to install individual meters on each of the Lots and bill each Lot respectively.

**Section 7.02      Owner's Maintenance Responsibility.** Except to the extent the Association is responsible for maintenance as provided in this Declaration (if at all), 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. Each Owner must also comply with any and all Legal Requirements applicable to its Lot and any activities thereon. 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 ARCHITECTURAL REVIEW COMMITTEE ("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 (if any), either natural or artificial, on each Lot must be properly irrigated (after the initial construction of a Dwelling thereon) 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.

Nothing herein shall be construed to require Declarant to perform any maintenance or other work on any Lot owned by it during Development Period except to the extent expressly provided under the Declarant Builder Agreement.

Section 7.03 Wastewater Systems. Each Owner (which term includes, without limitation, any Approved Builder except as otherwise expressly provided herein) shall be solely responsible for, at its sole cost and expense, the inspection, maintenance, repair and replacement of any septic system (or wastewater system) and all related facilities and components ("**Wastewater System(s)**") located on or exclusively serving such Lot, and for compliance with any and all Legal Requirements or Governmental Approvals applicable to such Wastewater Systems; provided, however, that the Association expressly reserves the right (but not obligation) to perform any inspections, maintenance, repairs and/or replacements with respect to a Lot's Wastewater System to the extent it determines appropriate or necessary in its sole but reasonable judgment and the cost of same shall be paid by the Owner and the Owner may be charged a Special Assessment for such costs incurred by the Association.

Section 7.04 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 7.05 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 7.05, "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 7.06 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 7.07 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 located within the Common Area or designated as Common Area (but not any stormwater facilities located on any Lot unless the Association has specifically agreed to be responsible for same in its sole discretion), 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) and/or control stormwater in the community, in accordance with the any applicable storm water maintenance manuals (the “**Stormwater Maintenance Manual(s)**”). Additionally, as provided in any Stormwater Maintenance Manual(s), each year the Association shall have an inspection report prepared by a qualified registered professional engineer in Wayne County, North Carolina which shall be submitted to any Governmental Authority requiring the same. The annual report shall include documentation of all inspections, as well as an operation assessment of the facilities. If the annual inspection reveals that the facilities do not function as intended or designed, the Association shall have the facilities repaired following the inspection. In the event of a conflict between this Section 7.07 and the provisions of the Stormwater Maintenance Manual, the provisions of the Stormwater Maintenance Manual shall control.

Section 7.08 Declarant Dedication Date. Notwithstanding anything to the contrary contained herein, nothing herein shall relieve Declarant from any express obligation of Declarant under the Declarant Builder Agreement to be responsible for the dedication of any roads and other infrastructure within the Property subject, however, to any applicable terms and conditions of the Declarant Builder Agreement (collectively the “**Public Infrastructure Dedication**”). Nothing contained herein shall be deemed to impose the Public Infrastructure Dedication obligations of Declarant on Approved Builder.

## **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 Lot until complete and final plans and specifications setting forth the information hereinafter described shall have been submitted to, and approved in writing by, 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 except as to ARC approvals issued to an Approved Builder that specify a longer duration and then only as to the duration stated in such approval 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 except as to ARC approvals issued to an Approved Builder that specify a longer duration and then only as to the duration stated in such 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.

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.

- (b) 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.
- (c) If any construction or alteration or landscaping work is undertaken or performed upon any portion of any Lot (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, 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 Initial Builder (but, in the case of the Initial Builder, only during the Initial Builder Period) upon any portion of the Property while such property is owned by the Declarant or Initial Builder (but, in the case of the Initial Builder, only during the Initial Builder Period). Any construction, alteration, addition or removal performed by the Declarant or Initial Builder (but, in the case of the Initial Builder, only during the Initial Builder Period) upon any property while such property is owned by the Declarant or Initial Builder (but, in the case of the Initial Builder, only during the Initial Builder Period) shall be exempt from the provisions of this ARTICLE VIII.

**Section 8.04     Architectural Review Committee.** Responsibility for the review of all applications under this 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 (but not the obligation) to appoint all members of the ARC, who shall serve at the Declarant's discretion (but without imposing any obligation or liability upon the Declarant); provided, however, that until one hundred percent (100%) of the Lots are Improved Lots or until the sooner expiration or termination of the Initial Builder Period, an agent, employee, or representative of the Initial Builder and selected by the Initial Builder shall be a member of the ARC; provided further, however, that no such ARC member selected by Initial Builder (or who is an employee, officer, owner or agent of the initial Builder) shall be entitled to any compensation by the ARC for serving upon the same. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant and, prior to the expiration or termination of the Initial Builder Period, Approved Builder. 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, must be unanimously approved by the members of the ARC. Furthermore, such approvals 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. Notwithstanding anything contained herein to the contrary, manufactured homes, pre-fabricated homes, and mobile homes shall not be allowed on any Lot.

**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 Legal Requirements or building codes and other requirements or regulations of the Governmental Authorities. IN ALL CASES THE OWNER IS RESPONSIBLE FOR ENSURING COMPLIANCE WITH LEGAL REQUIREMENTS, 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. Without limitation, any approval of any plans

or specifications or any desired work by ARC, shall not constitute the assumption of any responsibility or liability, or be deemed a representation or warranty, by ARC, the Association or Declarant for their accuracy, sufficiency or conformity with any Legal Requirements or for any other matter. 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 on or modifications to any Lot. In all matters, the ARC, the Declarant, the Association 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.

Section 8.07 Minimum Size. The Dwelling constructed on a lot must have at least 1,200 square feet of air conditioned space. The ARC shall reject any application for approval of a Dwelling that has less than 1,200 square feet of air conditioned space.

## 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) on an occurrence basis, and, if reasonably available, directors' and officers' liability insurance. Liability insurance hereunder shall name the Declarant as an additional insured during the Development Period. The Association shall also carry property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on or within any Common Area, if any, and on other portions of the Area of Common Responsibility. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvement. 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. The Association may also carry such other insurance from time to time as it may elect to carry in its sole but reasonable discretion. 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 and the Declarant and any of its Related Parties;

- (b) an agreed value endorsement and an inflation guard endorsement; and
- (c) an endorsement requiring at least thirty (30) days prior written notice to the Association (and during the Development Period, to any party who was at any time a Declarant hereunder) of any cancellation, substantial modification, or non-renewal; and
- (d) until the expiration of thirty (30) days after the insurer gives notice in writing to any Eligible Holder (as hereafter defined) at the notice address provided to the Association by such Eligible Holder who is a Mortgagee of any Lot having any right to insurance proceeds carried by the Association (if any), such Eligible Holder's rights to such insurance proceeds (if any) 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 (to the extent of any such right expressly provided hereunder). Any insurance proceeds from insurance carried by the Association which may be payable to the Owner of a Lot (if any) 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.

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 Mortgagee who provides a written request to the Association (and provided such request states the name and notice address of such holder, insurer, or guarantor and the Lot number; and upon making such request and providing such information, such Mortgagee shall become "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 financial statements of the Association within ninety (90) days of the date of the request which may or may not be audited but shall be certified as being true and accurate to the reasonable knowledge of an officer or member of the Board (if not audited).

**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 (to the extent any Owner is entitled to any distribution).

Section 10.04     Intentionally Omitted.

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 (without granting any such Mortgagee any rights to do so except as are expressly contemplated hereunder) 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 at the last address on file for such Mortgagee.

## 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 (which may include attached duplexes on those lots identified as a "duplex lot" on any Plat). 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. 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 to 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 other 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 ARTICLE VIII, 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 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 owned by an Approved Builder in accordance with permits issued by controlling governmental authorities or any portion of the Property by the Declarant in connection with the initial development and improvement of any portion of the Property owned by Declarant. 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. No Owner (except for Declarant during the Development Period) 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 or to the extent otherwise prohibited by this Declaration. Each Owner shall comply with any conditions or requirements of any Stormwater Maintenance Manual(s) or any other Legal Requirements applicable to activities conducted on its Lot including any buffer requirements.

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 specific assessment against the non-performing Owner.

Section 11.24 Removal of Trees. If a Governmental Authority, including without limitation the County, maintains requirements that currently affect the Property regarding "tree coverage" or "tree protection", as are set forth by County ordinance, County zoning code, or other Legal Requirements, all owners shall be responsible for observing and complying with any applicable ordinances and requirements of the County or other Legal Requirements concerning tree removal and tree protection. Because the ordinances and requirements of the County as well as other Legal Requirements may change from time to time, all Owners should consult the County planning department or other applicable entity prior to the removal or disturbance of any trees from or on their Lot.

## ARTICLE XII AMENDMENT

Until the termination of the Development Period, the Declaration may be amended only with the prior written consent of Declarant. Notwithstanding anything to the contrary herein, prior to the expiration or sooner termination of the Development Period, Declarant may unilaterally amend, supplement or amend and restate this Declaration and/or any Plats for any purpose (including, without limitation, for modifying, removing, imposing or granting, as the case may be, any easements, reservations, conditions, requirements or any other matter herein or therein) except as otherwise expressly limited hereby but only with the consent of the Initial Builder during the Initial Builder Period. Notwithstanding anything to the contrary, there shall be no amendments or modifications hereto or to the Bylaws or Articles of Incorporation, nor any other action taken by the Association or Board of Directors, which shall cause or have the effect of any reduction or limitation to any exculpation, limitation of liability or limitation of obligation (or any other protection) hereunder or provided herein for the benefit of any Person who is or was a Declarant at any time (or any such parties' Related Parties) or which increases the liability or obligations of any Person hereunder or with respect hereto or the Property who is or was a Declarant at any time (or any such parties' Related Parties), unless expressly consented to in writing by such Person(s) and its or their Related Parties. "Related Parties" shall refer to the affiliates and the members, managers, officers, employees, agents, directors, owners and any of their direct or indirect members, managers, officers, employees, agents, directors or owners as the case may be. After the Development Period (but subject to the preceding sentence), Declarant or the Board, and with the consent of the Initial Builder during the Initial Builder Period, 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 the U.S. Department of Housing and Urban Development ("HUD") and the U.S. Department of Veterans Affairs (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. No such amendment shall be deemed to adversely affect the title to any Owner's Lot if such amendment does not modify the property lines of such Owner's Lot, prevent access to such Lot (without providing reasonable alternative access), prevent the provision of utilities existing and available to such Lot at the time thereof (without obligating Declarant or any other party to provide any such utilities), or directly impose additional or more restrictive restrictions on the improvements and uses of the Lots from those restrictions existing as of the date hereof in a material and adverse manner. 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 and executed by a Person permitted or required to cause such amendment, unless a later effective date is specified therein. If an Owner consents to an amendment to this Declaration or the Bylaws (to the extent of any right to do so), 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) or actions brought by the Declarant against any party to enforce the provisions of this Declaration or counter-claims brought by the Association or Declarant in proceedings instituted against them; (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 except as provided above ("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 written or audio-visual 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; provided, nothing herein shall release or discharge such party or parties from any liability to a person or entity not a party to the foregoing proceedings.

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, Association, any Approved Builder 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 in compliance with applicable Legal Requirements and any terms hereof, 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. For clarification, no Approved Builder (or any of its Development Personnel) shall have any right to conduct any Development Activities outside of the Lots it owns except with Declarant's prior written consent (not to be unreasonably withheld, conditioned or delayed). Under no circumstances shall Declarant or the Association be responsible or liable for any Development Activities of any Approved Builder.

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 (but each of Declarant and Approved Builder shall only have such rights with respect to and on such Lots owned by Declarant or Approved Builder, as the case may be, except with the prior consent of the other, not to be unreasonably withheld, conditioned or delayed).

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") IF ANY, 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, provided the same comply with any applicable Legal Requirements, related to its development of the Property owned at such time by the party for whom such Development Personnel is employed (except to the extent otherwise expressly provided herein), engaged or acting for, 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 (but only such areas, Lots, Area of Common Responsibility and other portions of the Property owned at such time by the party for whom such Development Personnel is employed, engaged or acting for (except to the extent otherwise expressly provided herein), 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 Owner or their tenant. For clarification, no Approved Builder or any of its Development Personnel shall have the right to use any Property owned or maintained by Declarant without Declarant's prior written consent, not to be unreasonably withheld, conditioned or delayed. 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 deems necessary.

Section 15.05 Use of Common Areas. During the Development Period, Declarant's Development Personnel may use for any Development Activities, without charge, any Area of Common Responsibility (including improvements thereon). Approved Builder may also have such right to use such portions of the Area of Common Responsibility if consented to by Declarant (which consent shall not be unreasonably withheld, conditioned or delayed).

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 on the property owned by Declarant or an Approved Builder (and on property owned by the other with the other's prior consent, not to be unreasonably withheld, conditioned or delayed). 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 reconvered 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 Lots or Property owned at such time by the party for whom such Development Personnel is employed, engaged or acting for, 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 (and on property owned by the other with the other's prior consent, not to be unreasonably withheld, conditioned or delayed).

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 the Association fails to enforce compliance with any of the provisions of this Declaration by the Owner of any Lot after written notice to the Association thereof, 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 seventy-five percent (75%) 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 Assignment and Assumption of Declarant's Rights. Any or all of the rights and obligations of the Declarant set forth in this Declaration, the Bylaws or Articles of Incorporation may be transferred or assigned in whole or in part to the Association or to other Persons in Declarant's sole discretion by a written instrument signed by the Declarant. Upon any such transfer or assignment, the Declarant assigning or transferring its rights hereunder shall be automatically released from any and all liability arising with respect to such transferred rights and obligations to the maximum extent permitted by law. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records. 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 to the extent caused by such transferring or assigning Declarant in its capacity as Declarant hereunder occurring, or arising from any act, omission or matter to the extent caused by such transferring or assigning Declarant in its capacity as Declarant hereunder and occurring, prior to the date such successor succeeded to the interest of such transferring or assigning Declarant.

Section 16.07 Right to Develop. 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 or (c) the exercise by Declarant or an Approved Builder of any rights hereunder or (d) to construction activities and inconveniences or noise that may occur in connection therewith. 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 and the enjoyment of any easements or other rights of such Approved Builder hereunder, 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; provided, however, that the Initial Builder's rights as an Approved Builder shall terminate upon the expiration or termination of the Initial Builder Period.

Section 16.11 Enforcement of Declaration Terms. So long as Declarant owns any Lot, Declarant shall have the right (but not obligation) 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. Under no circumstances shall Declarant have any liability for its failure to enforce all or less than all of the terms of this Declaration.

Section 16.12 Approved Builder/Initial Builder; No Joint Venture or Partnership; No Implied Representations. Notwithstanding anything contained in this Declaration (including, without limitation, the fact that Declarant has the right to designate the Approved Builders and the right to (and may in fact) appoint an Approved Builder (or its employees, officers or affiliates) to the Board or ARC), or any other fact or circumstances, under no circumstance shall Declarant or the Association be deemed or construed in any way to be an affiliate, partner, joint venturer or agent of any Approved Builder (which term includes, without limitation, the Initial Builder) or responsible or liable for any action or omission, representation or warranty or otherwise, of any Approved Builder or its Development Personnel (including, without limitation, with respect to the quality of construction of any homes made by an Approved Builder or any misrepresentations of such Approved Builder or any of its Development Personnel). No representation whatsoever is made by Declarant or the Association as to any Lot or the improvements which may be constructed thereon by Approved Builder (the quality of same, resale value or otherwise).

By acceptance of a deed to a Lot, each purchaser or Owner thereof, for itself and all of its successors and/or assigns or any other persons claiming under such purchaser or Owner or their successors and/or assigns, shall conclusively be deemed to have acknowledged and agreed (to the maximum extent permitted by law) that Declarant and Association have made no representations or warranties, and Declarant and the Association hereby specifically disclaims any and all representations and warranties, express or implied, regarding the Property, the Lots or Association or any Approved Builder. Owners shall not look to the Association or Declarant for any claims or losses it may have on account of the action of any Approved Builder, its Development Personnel or any other party.

Section 16.13 Occupants Bound. All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and Architectural Guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of Lots and the guests and invitees of Owners and occupants. The Owner shall be responsible for insuring that the occupants, the guests, invitees and licensees of the Owner and occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and Architectural Guidelines. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not timely paid, the fine may then be levied against the Owner.

Section 16.14 Self-Help. In addition to any other remedies provided for herein, the Association, acting through the Board, Declarant or their respective duly authorized agents shall have the right, but not the obligation, to enter upon any Lot or any other portion of the Property to abate or remove any structure, improvement, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, the use restrictions or the Architectural Guidelines. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to

exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required herein or by law. All costs of self-help, including, without limitation, reasonable attorneys' fees actually incurred, shall be assessed against the Lot of the violating Owner as a specific assessment.

Section 16.15 Brock Works Joinder. Brock Works joins in this Declaration for the purposes of submitting the Brock Works Property to the provisions of this Declaration, including but not limited to, the covenants, restrictions, and design guidelines imposed hereby, any and all obligations to pay assessments, and any and all easements or reservation of rights in favor of or established by the Declarant, Approved Builder, or the Association. The provisions of this Declaration shall be a burden and a benefit to the Brock Works Property and run with the land. The Brock Works Property shall be Lots (as defined above) and any owner of the Brock Works Property shall be an Owner and a Member (as defined above).

[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.

**ENC MAR-MAC LLC,**  
a North Carolina limited liability company  
By: ENC Investment Holdings LLC, its sole member

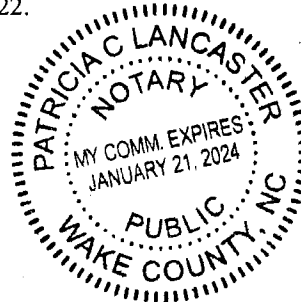
By: \_\_\_\_\_  
Name: J. Michael Newman  
Its: Manager

STATE OF NORTH CAROLINA  
COUNTY OF Wake

I certify that the following person personally appeared before me this day, the 8 of June, 2022, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: J. Michael Newman, Manager of ENC MAR-MAC LLC.

Witness my hand and official seal, this the 8 day of June, 2022.

Notary Public: Patricia C Lancaster  
Printed Name: Patricia C Lancaster  
My commission expires: 1/21/2024



*[Brock Works signature on the following page.]*

IN WITNESS WHEREOF, Brock Works joins in this Declaration for the purposes set forth in Section 16.15 above, and has executed this Declaration by its duly authorized officers on the day and year set forth below.

**BROCK WORKS LLC,**  
a North Carolina limited liability company

By: *Billy Dan Brock, Jr.*  
Name: Billy Dan Brock, Jr.  
Its: Member-Manager

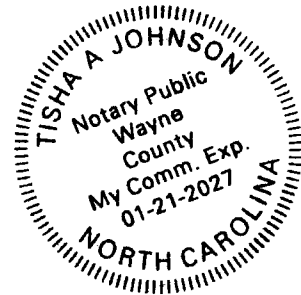
By: *Daniel Dean Brock*  
Name: Daniel Dean Brock  
Its: Member-Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAYNE

I certify that the following person personally appeared before me this day, the 6<sup>th</sup> of June, 2022, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: BILLY DAN BROCK, JR., MEMBER-MANAGER of BROCK WORKS LLC.

Witness my hand and official seal, this the 6<sup>th</sup> day of June, 2022.

Notary Public: *Tisha A Johnson*  
Printed Name: Tisha A Johnson  
My commission expires: 01-21-27

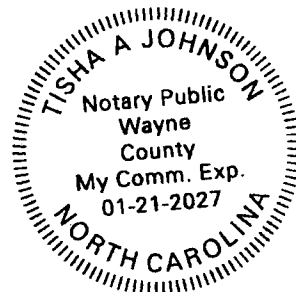


STATE OF NORTH CAROLINA  
COUNTY OF WAYNE

I certify that the following person personally appeared before me this day, the 6<sup>th</sup> of June, 2022, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: DANIEL DEAN BROCK, MEMBER-MANAGER of BROCK WORKS LLC.

Witness my hand and official seal, this the 6<sup>th</sup> day of June, 2022.

Notary Public: *Tisha A Johnson*  
Printed Name: Tisha A Johnson  
My commission expires: 01-21-27



**JOINDER OF LIENHOLDER**

**FARMERS & MERCHANTS BANK aka F&M BANK**, a North Carolina corporation, being the sole beneficiary of that certain Deed of Trust from ENC Mar-Mac LLC, dated March 31, 2022, recorded April 1, 2022, in Book 3723, Page 631, in the Office of the Register of Deeds for Wayne County, North Carolina (the "Wayne County Registry") and the associate Assignment of Rents dated March 31, 2022 and recorded April 1, 2022 in Book 3723, Page 717, of the Wayne County Registry, encumbering all or a portion of the Property hereby consents to the terms and provisions of this Declaration of Covenants, Restrictions and Easements for Drake Estates to which this Lienholder Consent and Subordination is attached and acknowledges that the execution thereof does not constitute a default under the lien document or any other document executed in connection with or as security for the indebtedness above described, and subordinates the liens of the lien document and any other liens and/or security instruments securing said indebtedness to the rights and interests created under said Declaration, and acknowledges and agrees that a foreclosure of said liens and/or security interests shall not extinguish the rights, obligations and interests created under this Declaration. No warranties of title are hereby made by lienholder, lienholder's joinder herein being solely limited to such consent and subordination.

**FARMERS & MERCHANTS BANK aka F&M BANK,**  
a North Carolina corporation

By: [Signature] (SEAL)

Name: ANTHONY J. CRITELLI

Title: SVP

STATE OF NORTH CAROLINA

COUNTY OF WAKE

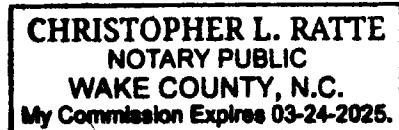
I certify that Anthony J. Critelli, the Senior Vice President of Farmers & Merchants Bank aka F&M Bank, a North Carolina corporation, personally appeared before me this day, acknowledging to me that he/she signed the foregoing document on behalf of said Farmers & Merchants Bank aka F&M Bank.

This the 3<sup>rd</sup> day of June, 2022.

[Signature], Notary Public

Printed name: CHRISTOPHER L. RATTE

My commission expires: 3-24-2025



(Official Seal)

## Exhibit A

### The Declarant Property

Being all that certain tract or parcel of land lying and being situated in Wayne County, North Carolina and being more particularly described as follows:

Being those certain Parcels in Brogden Township, Wayne County, North Carolina. Parcels are located to the north of U.S. Highway 13, west of Ridge Road / S.R. 1284 and being more particularly described as follows:

Beginning at an existing rebar (control corner), which is the northeast corner of the property owned by Charles and Juanita Powell (Deed Book 1810, Page 452 & Plat Cabinet L, Slide 28-1), said existing rebar is North 30° 46' 45" East 597.30 feet from NCGS Grid Monument "Brogden" having N.C. Grid Coordinates (NAD 83) of North = 571,836.46 feet and East = 2,278,151.72 feet; thence from the existing rebar along Powell property line North 63° 03' 29" West 351.25 feet to an existing rebar in the line of property owned by Wanda & Terry Tyndell (Deed Book 3481, Page 208 & Plat Cabinet O, Slide 91-C; thence along Tyndell property line North 20° 35' 43" West 69.98 feet to an existing rebar; thence along Tyndell property line South 76° 49' 11" West 129.17 feet to an existing rebar; thence along Powell property line North 21° 57' 33" West 121.78 feet to an existing rebar, a corner with property owned by Delaine & Joe Tucker Jr. (Deed Book 3481, Page 212 & Plat Cabinet O, Slide 91-C); thence continuing with Tucker property line North 21° 57' 33" West 517.05 feet to an existing rebar, a corner with property owned by Brenda Lancaster (Deed Book 1829, Page 718); thence with continuing with Lancaster property line North 21° 57' 33" West 708.35 feet to an existing concrete monument with rebar, a corner with property owned by N-10 LLC (Deed Book 3234, Page 695); thence along N-10-LLC property line North 70° 17' 24" East 638.80 feet to an existing concrete monument with rebar; thence along N-10-LLC property line North 16° 53' 16" West 231.97 feet to an existing rebar, a corner with lot 82 and lot 83 of Crestwood Subdivision, Section five (Plat Cabinet J, Page 255); thence along the property line of Crestwood Subdivision, Section Five South 71° 50' 03" East a total distance of 1,179.50 feet to an existing iron pipe, a corner with lot 81 and a corner of property owned by Glenda Overman (Deed Book 1275, Page 409); thence along the property line of Overman, Lanier (Deed Book 3617, Page 371), Ploeger (Deed Book 2503, Page 420) South 71° 59' 17" East 560.37 feet to an existing iron pipe, a corner with James & Jennifer Britt (Deed Book 1567, Page 202 & Deed Book 1758, Page 857); thence along Britt property line South 58° 09' 17" East 364.86 feet to an existing rebar; thence along Britt property line South 56° 01' 04" East 132.55 feet to an existing iron pipe on the western right of way (60') of Till Drive; thence along the western right of way (60') of Till Drive North 34° 00' 00" East 180.72 feet to a point; thence along a curve to the left, with a radius of 20.00 feet, a length of 30.97 feet, a delta angle of 90° 01' 01", and a chord bearing and distance of North 09° 05' 34" West 27.97 feet to an existing rebar on the western right of way of Till Drive and the southern right of way (60') of Ridge Drive / S.R. 1284; thence along a curve to the left, with a radius of 1,075.92 feet, a length of 97.61 feet, a delta angle of 05° 11' 52", and a chord bearing and distance of South 55° 49' 31" East 97.57 feet to a point on the southern right of way of Ridge Drive / S.R. 1284, and the eastern right of way of Till Drive, thence along a curve to the left, with a radius of 20.00 feet, a length of 30.50 feet, a delta angle of 87° 22' 44", and a chord bearing and distance of South 77° 26' 10" West 27.63 feet to an existing rebar on the eastern right of way (60') of Till Drive; thence along the eastern right of way of Till Drive South 33° 44' 37" West 180.78 feet to an existing rebar on the eastern right of way (60') of Till Drive, and being a corner of property owned by Skill Creations Inc. (Deed Book 2782, Page 522 & Plat Cabinet L, Slide 61-F); thence leaving the right of way of Till Drive and along the property line of Skill Creations South 56° 03' 49" East 148.71 feet to an existing rebar; thence along the property line of Skill Creations South 63° 04' 26" East 208.81 feet to a point in Simon Branch and a corner of property owned by Christopher & Kortney Atkins (Deed Book 3496, Page 514); thence along the run of Simon Branch the following calls: South 35° 28' 48" East 31.97 feet to a point; thence South 34° 03' 10" East 33.95 feet to a point; thence South 56° 48' 46" East 12.90 feet to a point; thence South 14° 30' 16" East 29.42 feet to a point; thence South 51° 19' 56" East 23.50 feet to a point; thence South 04° 47' 22" East 76.32 feet to a point; thence South 27° 54' 58" East 37.21 feet to a point, a corner with property owned by Gary & Brenda Scott (Deed Book 2088, Page 760); thence continuing along the run of Simon Branch South 66° 08' 13" East 86.23 feet to a point on the northern right of way (60') of Sandhill Drive / S.R. 1131; thence along the northern right of way of Sandhill Drive South 53° 42' 13" West 203.06 feet to a point at the intersection of the northern right of way of Sandhill Drive / S.R. 1131 and the northern right of way of U.S. Highway 13; thence with the northern right of way (60') of U.S. Highway 13 South 67° 56' 22" West 61.91 feet to an existing rebar, a corner with property owned by Cecil & Pamela Howard (Deed Book 3287, Page 286); thence leaving the northern right of way of U.S. Highway 13



and along the property line of Howard North 85° 28' 52" West 367.83 feet to an existing iron pipe, a corner with property owned by Melvin & Joan Bazemore (Deed Book 2190, Page 275); thence along the property line of Bazemore North 83° 21' 26" West 118.56 feet to a point, a corner with Tristan Pate & Jessica Patterson (Deed Book 2239, Page 766); thence along Pate & Patterson property line North 87° 09' 24" West 110.65 feet to a point, a corner with property owned by Randy Mills (Deed Book 3474, Page 692); thence along Mills property line North 84° 55' 26" West 157.89 feet to a point, a corner with property owned by Steven & Maria Gutierrez (Deed Book 3061, Page 21); thence along the property line of Gutierrez North 86° 10' 07" West 128.27 feet to a point, a corner of property owned by Bessie Sawyer (Will 95E, Page 629); thence along Sawyer property line North 85° 54' 18" West 385.70 feet to an existing ½" iron pipe; thence along the property line of Sawyer South 22° 29' 26" East 366.18 feet to an existing rebar; thence along the property line of Sawyer South 22° 26' 20" East 199.51 feet to an existing ½" iron pipe on the northern right of way (60') of U.S. Highway 13; thence along the northern right of way of U.S. Highway 13 South 67° 54' 20" West 349.83 feet to a point; thence along the northern right of way of U.S. Highway 13 South 67° 55' 25" West 160.00 feet to a point; thence along the northern right of way of U.S. Highway 13 South 67° 57' 59" West 108.41 feet to a point; thence along the northern right of way of U.S. Highway 13 South 67° 51' 05" West 119.93 feet to a point, a corner with property owned by Kala Shaw (Deed Book 3321, Page 70 & Plat Cabinet L, Slide 28-I); thence along Shaw property line North 22° 02' 01" West 200.04 feet to an existing ½" iron pipe, a corner with property owned by Kala Shaw (Deed Book 3458, Page 792); thence along Shaw property line North 67° 52' 22" East 7.68 feet to a point; thence along Shaw property line North 22° 03' 32" West 7.84 feet to a point; thence along Shaw property line South 73° 39' 26" West 128.37 feet to a point in the line of property owned by Charles & Juanita Powell (Deed Book 1810, Page 452); thence along the Powell property line North 21° 57' 28" West 76.66 feet to the point of beginning and containing 77.34 acres more or less.

**LESS AND EXCEPT** that property located in Wayne County, North Carolina and being more particularly described as follows:

BEING ALL of the following two (2) parcels of land located in Wayne County, North Carolina:

Being that certain tract of land identified as Lot 1, containing 13,852 square feet, more or less, as shown on a map entitled "Final Map, Drake Village, Brogden Township, Wayne County, N.C.", dated March 11, 2008, prepared by Bobby Rex Kornegay, Professional Land Surveyor, and recorded in Plat Cabinet N, Slide 5-A, in the Wayne County Registry. And being a portion of the property conveyed to Willie L. Shaw, Jr. and Mary Ann L. Shaw, Trustees of the Willie L. Shaw, Jr. and Mary Ann L. Shaw Revocable Living Trust, dated September 11, 2003 and recorded in Book 2124, Page 726 of the Wayne County Registry.

For Reference Purposes Only: Tax Parcel ID No. 2587-03-2203

AND

Being that certain tract of land identified as Lot 2, containing 13,351 square feet, more or less, as shown on a map entitled "Final Map, Drake Village, Brogden Township, Wayne County, N.C.", dated March 11, 2008, prepared by Bobby Rex Kornegay, Professional Land Surveyor, and recorded in Plat Cabinet N, Slide 5-A, in the Wayne County Registry. And being a portion of the property conveyed to Willie L. Shaw, Jr. and Mary Ann L. Shaw, Trustees of the Willie L. Shaw, Jr. and Mary Ann L. Shaw Revocable Living Trust, dated September 11, 2003 and recorded in Book 2124, Page 726 of the Wayne County Registry.

For Reference Purposes Only: Tax Parcel ID No. 2587-03-2169

**BEING THE SAME** property as described in the deeds recorded at Book 3723, Page 610, and Book 3723, Page 624, Wayne County Registry, less that property described in the deed recorded at Book 3737, Page 714, Wayne County Registry.

**Exhibit B**

The Brock Works Property

Being all those certain tracts or parcels of land lying and being situated in Wayne County, North Carolina and being more particularly described as follows:

BEING ALL of the following two (2) parcels of land located in Wayne County, North Carolina:

Being that certain tract of land identified as Lot 1, containing 13,852 square feet, more or less, as shown on a map entitled "Final Map, Drake Village, Brogden Township, Wayne County, N.C.", dated March 11, 2008, prepared by Bobby Rex Kornegay, Professional Land Surveyor, and recorded in Plat Cabinet N, Slide 5-A, in the Wayne County Registry. And being a portion of the property conveyed to Willie L. Shaw, Jr. and Mary Ann L. Shaw, Trustees of the Willie L. Shaw, Jr. and Mary Ann L. Shaw Revocable Living Trust, dated September 11, 2003 and recorded in Book 2124, Page 726 of the Wayne County Registry.

For Reference Purposes Only: Tax Parcel ID No. 2587-03-2203

AND

Being that certain tract of land identified as Lot 2, containing 13,351 square feet, more or less, as shown on a map entitled "Final Map, Drake Village, Brogden Township, Wayne County, N.C.", dated March 11, 2008, prepared by Bobby Rex Kornegay, Professional Land Surveyor, and recorded in Plat Cabinet N, Slide 5-A, in the Wayne County Registry. And being a portion of the property conveyed to Willie L. Shaw, Jr. and Mary Ann L. Shaw, Trustees of the Willie L. Shaw, Jr. and Mary Ann L. Shaw Revocable Living Trust, dated September 11, 2003 and recorded in Book 2124, Page 726 of the Wayne County Registry.

For Reference Purposes Only: Tax Parcel ID No. 2587-03-2169

**BEING THE SAME** property as described in the deed recorded at Book 3737, Page 714, Wayne County Registry.