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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MAXWELL RIDGE

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PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION PURSUANT TO
THE NORTH CAROLINA UNIFORM ARBITRATION ACT, § 15-48-10, S.C. CODE OF
LAWS OF 1976 AS AMENDED.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MAXWELL RIDGE**

THIS DECLARATION is made this the 3RD day of August 2021, by **HUFF
ROKOSKI DEVELOPMENT, LLC**, a North Carolina limited liability company (hereinafter
referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property more particularly described on
Exhibit "A" attached hereto, which property is more particularly described in Article I below; and

WHEREAS, Declarant desire to create thereon an exclusive residential community of
single family detached residential lots to be named Maxwell Ridge; and

WHEREAS, Declarant anticipates that the single family detached residential lots will be
developed in a single neighborhood; and

WHEREAS, Declarant desires to ensure the attractiveness of the community, to prevent
any further impairment thereof, to prevent nuisances, to preserve, protect and enhance the values
and amenities of all property within the community and to provide for the maintenance and upkeep
of all residential units as provided herein, the Common Areas as hereinafter defined; and to this
end, desires to subject the real properties described herein below in Article I, to the coverage of
the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and
all of which is and are for the benefit of said properties described below, and each owner thereof;
and

WHEREAS, Declarant has incorporated or will incorporate under North Carolina law,
MAXWELL RIDGE HOMEOWNERS ASSOCIATION, INC.,
as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in
Article I, Section One below, and such additions thereto as may be hereafter made pursuant to
Article I, Section Two hereof, shall be held, sold and conveyed subject to the following easements,
restrictions, covenants and conditions, which are for the purpose of protecting the values and
desirability of, and which shall run with, the real properties and be binding upon all parties having
any right, title or interest in the described properties or any party thereof, their heirs, successors
and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
PROPERTIES SUBJECT TO THIS DECLARATION

Section One: Properties. The property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Hoke County, North Carolina, and is described as follows:

All that certain piece, parcel or tract of land lying and being in Hoke County, North Carolina, and being more particularly described in **Exhibit "A"**, which is attached hereto and incorporated herein by reference.

ARTICLE II
DEFINITIONS

Section One. "Association" shall mean and refer to **MAXWELL RIDGE HOMEOWNERS' ASSOCIATION, INC.**, its successors and assigns and a copy of the Articles of Incorporation and By-Laws of the Association are attached hereto as **Exhibits "C" & "D"** respectively and incorporated herein by reference.

Section Two. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee or fee interest in any Lot which is a part of the Properties, including contract sellers, but excluding those having any interest merely as security for the performance of an obligation.

Section Three. "Properties" shall mean and refer to that certain real property hereinbefore described in Article I, Section One and such additions thereto from the property described in Article I, Section Two, as may hereafter be brought within the jurisdiction of the Association and be made subject to this Declaration.

Section Four. "Lot" shall mean and refer to any plot of land shown upon an approved site plan or any recorded subdivision map of the Properties covered under Article I, Section One, or additional thereto, with the exception of the Common Area, and shall include all improvements thereon.

Section Five. "Declarant" shall mean and refer to **HUFF ROKOSKI DEVELOPMENT, LLC**, a North Carolina limited liability company, its successors and assigns, if such successors or assigns should acquire all of the Declarant's interest in the Properties.

Section Six. "Master Association" shall mean and refer to the master association for Maxwell Ridge Homeowners Association, Inc. created by the Master Declaration.

Section Seven. "Master Declaration" shall have the meaning set forth in Article III Section Six.

Section Eight. "Common Area" shall mean all real property owned by the Association and all other improvements for the common use, benefit and enjoyment of the Owners. Common Areas, with respect to the property subject to this Declaration, shall be shown on the various plats recorded or to be recorded in the Hoke County Public Registry and designated thereon as "Common Areas", but shall exclude all Lots as herein defined, and all publicly dedicated streets, if any. "Common Area" shall include all private roads and drives shown on said plats as now recorded and as shall

be hereinafter recorded in the Hoke County Public Registry covered under Article I, Section One.

Section Nine. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section Ten. "Member" shall mean and refer to an Owner who holds membership in the Association pursuant to this Declaration.

Section Eleven. "Hoke County Public Registry" shall mean and refer to the Office of the Register of Deeds for Hoke County, North Carolina.

Section Twelve. "Building" shall mean a residential structure constructed or to be constructed on a Lot; provided it is specifically understood that a Building shall be treated as the personal property of, or a betterment to the Lot, by an Owner.

Section Thirteen. "Builder" shall mean and refer to residential homebuilders who purchase Lots from the Declarant for the construction of residential homes to be sold to Owners. H &H Constructors, Inc. and H & H Constructors of Fayetteville, LLC are expressly considered a builder for the purpose of this definition.

ARTICLE III **PROPERTY RIGHTS**

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

- (a) Any rights of assessment under the Master Declaration and other fees for the use of any facilities situated upon property owned by the Master Association;
- (b) The right of the Association to charge a reasonable admission and other fees for the use of the Common Area and any recreational facility situated thereon;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the Members;

No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Members agreeing to such dedication or transfer has been recorded;

- (d) The right of individual owners to the exclusive use of driveways and parking spaces as provided in this Article;
- (e) The right of the Association to limit the number of guests of Members;
- (f) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area facilities and in aid thereof to mortgage said properties, and the rights of such mortgagee in said properties shall be subordinate to

the rights of the homeowners and respective mortgagees hereunder;

- (g) The right of the Association to adopt, publish, and enforce reasonable rules and regulations as provided in Article IX;
- (h) The right of the Association to enter any Lot and Common Area in order to perform and maintenance, alteration, or repair required herein to be performed by the Association, and the Owner of such Lot shall permit the Association or its representative to enter for such purpose at reasonable times and with reasonable advance notice;
- (i) The right of the Association or its representative to enter any Lot in the case of any emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate;
- (j) The easement rights of the Declarant reserved in Article X of this Declaration;
- (k) The rights of the Declarant reserved in Article XI of this Declaration. Section Two. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area depicted on such maps of any property subjected to the terms of this Declaration, to the extent the same are from time to time recorded in the Office of the Register of Deeds for Hoke County, North Carolina in the Association, free and clear of all encumbrances and liens, except those set forth in this Declaration and any easements of record. Following the conveyance of Common Area to the Association, Declarant shall be entitled to proration credit for all expenses of the Association incurred by the Declarant (including insurance and real estate taxes) which have not theretofore been reimbursed to Declarant. The Common Area shall be conveyed without any express or implied warranties, which warranties are hereby expressly disclaimed by Declarant.

Section Three. Status of Title of Property; Property Subject to Master Declaration. The Declarant represents to the Association and all the Owners that, as of the effective date hereof, the Declarant has marketable, fee simple title to the Land and that the rights and interest of all Owners in and to the Property are subject only to (i) liens for real estate taxes for the current year and subsequent years; (ii) existing and/or recorded easements, conditions, covenants, declarations, reservations and restrictions including, without limitation, those set forth in this Declaration; (iii) easements and use rights, if any, reserved by the Declarant hereunder; (iv) applicable governmental regulations, including zoning laws, which may be imposed upon the Property from time to time; and (v) the existing Mortgages of the Project Lender encumbering portions of the Property.

The Master Declaration provides a method and easement for the shared use by the Owners of Lots, and their permitted guests, of certain parking, and certain other amenities, as more particularly set forth in the Master Declaration.

Section Four. Limited Warranty From Declarant. FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF COMPLETION OF CONSTRUCTION (BEING THE LATER OF SUBSTANTIAL COMPLETION UNDER THE CONSTRUCTION CONTRACT, OR THE DATE A CERTIFICATE OF OCCUPANCY IS ISSUED THEREFOR), THE DECLARANT SHALL AT NO COST TO THE ASSOCIATION REPAIR OR REPLACE (IN THE DECLARANT'S DISCRETION) ANY PORTIONS OF THE COMMON AREAS (EXCEPT FIXTURES, ACCESSORIES AND APPLIANCES COVERED BY SEPARATE WARRANTIES OF THEIR RESPECTIVE MANUFACTURERS) WHICH ARE DEFECTIVE

AS TO MATERIALS OR WORKMANSHIP. THIS LIMITED WARRANTY IS IN PLACE OF ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND THE DECLARANT DISCLAIMS ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, THE LIABILITY OF THE DECLARANT SHALL BE LIMITED TO SUCH REPAIR OR REPLACEMENT AND THE DECLARANT SHALL NOT BE LIABLE FOR DAMAGES OF ANY NATURE, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, REGARDLESS OF WHETHER SUCH DAMAGES ARE CLAIMED TO ARISE OUT OF THE LAW OF CONTRACT, TORT OR OTHERWISE, OR PURSUANT TO STATUTE OR ADMINISTRATIVE REGULATIONS. Each Owner, in accepting a deed from the Declarant or any other party to a Lot, expressly acknowledges and agrees that this Section Four establishes the sole liability of the Declarant to the Association and the Owners related to defects in the Common Areas and the remedies available with regard thereto. At the end of the one (1) year warranty period referred to hereinabove in this Section Four, the Declarant will assign to the Association in writing all of its rights, claims, causes of action and demands which it has or which may thereafter accrue against all other people who may be responsible for the design and/or construction of the Common Areas. THIS LIMITED WARRANTY RELATES SOLELY TO THE COMMON AREAS, THE BUILDING CONSTRUCTED UPON EACH LOT IS SUBJECT TO A SEPARATE LIMITED WARRANTY PURSUANT TO THE REAL ESTATE PURCHASE AGREEMENT THEREFOR BETWEEN THE OWNER AND THE DECLARANT.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section One. Every Owner and Builder shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section Two. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners of a Lot with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership, on the happening of either of the following events, whichever occurs later:

- (a) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; or
- (b) Ten years from the date of recording of this Declaration or any Supplement adding additional land under Article I, whichever is later.

Section Three. Declarant shall be entitled to appoint the entire Board of Directors while Class B membership exists.

ARTICLE V

COVENANT FOR ASSESSMENTS

Section One. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments, such assessments to be established and collected as hereinafter provided, and (3) specific assessments against a Lot(s) as provided in this Declaration. The annual, special and specific assessments, together with interest, late charges, costs and reasonable attorney fees, shall be a charge on the Lot and shall be a continuing lien upon the properties against which each such assessment is made. Each such assessment, together with interest, late charges, costs and reasonable attorney fees, shall also be the personal obligation of the Owner. If a lien has been properly filed in the Hoke County Public Registry, it may be foreclosed as further described hereafter in Article V, Section Ten.

Section Two. Any expenses incurred by the Association for the benefit of less than all of the Lots may be specially assessed equitably among all of the Lots which are benefitted according to the benefit received. Any Association expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots, or by the licenses or invitees of any such Lots, may be specifically assessed against the Lots whose occupant, licensee or invitee occasioned any such Association expenses. To the extent not inconsistent with the Act, any Association expenses which significantly disproportionately benefit all Lots may be assessed equitably among all Lots according to the benefit received.

Section Three. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties, including the following: (1) the improvement, repair and maintenance of the Common Areas; (2) the maintenance, repair and reconstruction of private water and/or sewer lines (and any meters of lift stations associated therewith), private drives, driveways, walks, and parking areas situated on the Common Area; (3) the cutting and removal of weeds and grass, the removal of trash and rubbish, or any other maintenance of the Common Areas; (4) the payment of taxes and public assessments assessed against the Common Areas; (5) the procurement and maintenance of insurance in accordance with this Declaration; (6) the employment of attorneys and accountants to represent the Association when necessary; (7) the provision of adequate reserves for the replacement of capital improvements, including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and (8) such other needs as may arise.

Section Four. Maximum Annual Assessments. The Assessments against the Lots shall be based upon annual estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of the Association's obligations under this Declaration. Such estimated expenses may include, among other things, the following: expenses of management; taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees, including fees for a Manager (if any); utility charges, legal and accounting fees; any deficit remaining from a previous period; creation of reasonable contingency reserves, surplus, and/or

sinking funds; and any other expenses and liabilities which may be incurred by the Association under or by reason of this Declaration. Such expenses shall constitute the Common Expenses. Until January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum annual assessment shall be \$3,000.00 per Lot (except that pursuant to Section Eight of this Article, the maximum annual assessment for Lots owned by Declarant which are not occupied as a resident shall be \$300.00 per Lot).

(a) From and after January 1, of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board of Directors effective January 1 of each year without a vote of the Membership, but subject to the limitation that any such increase shall not exceed the greater of twenty (20%) percent or the percentage increase in the Consumer Price Index (published by the Department of Labor, Washington, DC) for all cities over the preceding twelve (12) month period which ended on the previous October 1.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, or until increased as provided for in (a) above or (c) below, whichever last occurs, the maximum annual assessment may be increased above the increase permitted in Section 4(a) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum annual assessment.

EACH OWNER FURTHER ACKNOWLEDGES THAT THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY TO PREPARE ANY BUILDING FOR AN IMPENDING HURRICANE OR STORM, INCLUDING, BUT NOT LIMITED TO, INSTALLING AND REMOVING STORM SHUTTERS. THE RESPONSIBILITY FOR COSTS AND EXPENSES OF WHICH ARE SOLELY THOSE OF THE OWNER.

Section Five. Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of supplying adequate reserve funds for the replacement of capital improvements; defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any part of the improvements and Properties under this Declaration; obtaining appropriate insurance; and paying any unusual, unforeseen and non-recurring expenses of the Association. Should the Association, by and through its elected or appointed Board of Directors, as the case may be, at any time determine, in the sole discretion of said Board of Directors, that the annual assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Association, whether it be having reserve funds for the repair, maintenance or replacement of capital improvements or otherwise, said Board of Directors shall have the authority to levy such special assessments as it shall deem necessary.

Section Six. Annual Budget. The annual assessments shall be determined on a calendar year basis. On or before December 1 of each year, the Association shall prepare or cause to be prepared an operating budget for the upcoming calendar year. The budget shall itemize the estimated expenses of the Association for such calendar year, anticipated receipts (if any), and any document for the assessments for the upcoming fiscal year and as the major guideline under which the Association shall be operating during such annual period.

Section Seven. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas and those other portions of the Properties which the Association may be obligated to maintain, repair or replace. Such reserve fund is to be established, insofar as is practicable, out of regular assessments for Common Expenses.

Section Eight. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate of all similar Lots and shall be collected on a monthly basis. Provided, however, that the annual and special assessments for Lots owned by Declarant which have not been transferred to non-related third parties and are not occupied as a residence, shall at all times be ten percent (10%) of the annual or special assessments for other Lots. Instead of paying ten percent (10%) of all assessments, Declarant shall have the option, in its sole discretion, of funding the deficiency in the operating budget of the Association.

It is the intention of this Declaration that all Lots shall have substantially equal assessments since all Lots require essentially the same maintenance and reserves, and all Lots shall have equal rights to use and enjoy the Common Areas.

Section Nine. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each Lot on the date of the month on which such Lot is conveyed by Declarant. Such annual assessments shall be paid ratably on a monthly basis. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section Ten. Effect of Nonpayment of Assessments; Remedies of the Association. The payment of any assessment or installment thereof due to the Association shall be in default if such assessment, or any installment thereof, is not paid to the Association on the due date for such payment. A late charge of Fifty (\$50.00) Dollars shall be added to any assessment not paid within fifteen (15) days after the due date, together with interest from the due date at eight (8%) percent per annum. The late charge penalty will be added for each month a payment is delinquent.

In the event of non-payment by an Owner of assessments, the Association is granted a lien upon the Lot, which shall secure all monies due for all assessments now or hereafter levied and which shall also secure interest payments, late penalties, and costs and expenses, including a reasonable attorneys fee, which may be incurred by the Association in enforcing the lien.

The lien granted to the Association may be foreclosed in the same manner as mortgages may be foreclosed in the State of North Carolina, and in any suit or foreclosure of said lien, the Association shall be entitled to rental from the Owner of a Lot from the date on which the payment of any assessment became delinquent and shall be entitled to the appointment of a receiver to collect said rents.

No Owner may exempt himself or herself from liability for any assessments levied against such Owner and his or her Lot by waiver of the use of enjoyment of the Common Area or by

abandonment of his or her Lot or in any other manner.

The Association in the event of any default hereunder by an Owner may proceed to enforce and collect the assessment against the Owner in any manner provided herein, including the right of foreclosure and sale. In any action instituted by the Association to enforce the provisions of this Declaration, including but not limited to, non-payment of assessments, the offending or defaulting Owner shall be responsible for all the costs of collection, including a reasonable attorneys fee incurred by the Association.

Section Eleven. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, including but not limited to a deed-in-lieu of foreclosure given to any institutional mortgage lender or the development lender or their respective successors and assigns, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or form the lien thereof.

Section Twelve. Working Capital Fund. At the time of closing of the sale of each Lot to a purchaser who is not a Builder, a sum equal to Five Hundred and No/100 (\$500.00) Dollars for each Lot shall be collected from the Purchaser and transferred to the Association to be used for working capital. The purpose of said capital is to ensure that the Association will have adequate cash available to meet unforeseen expenses and to acquire additional equipment or services deemed necessary or desirable. Amounts paid shall not be considered advance payment of any assessments.

Section Thirteen. Taxes. Taxes assessed against a Lot shall be the responsibility of the Owner but taxes separately assessed against the Common Areas shall be an expense of the Association and shall be paid by the Association.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

Section One. Owner's Property Insurance. Each Owner shall procure and maintain in full force and effect property insurance covering the Building constructed upon any Owner's Lot, as well as all other improvement, fixtures and equipment thereon, in an amount equal to one hundred (100%) percent of the then current replacement cost thereof. Each Owner shall at the original issuance thereof and at each renewal provide to the Association a certificate of insurance for such Owner's Building. The exclusive authority to negotiate, settle and otherwise deal in all respects with a Building's insurer and to adjust losses under the Building's insurance policy provided for herein shall be that of the Owner and the Owner's Mortgagee, if said Mortgagee is to entitled. The cost of the insurance premium for the property insurance under this Article VI, Section One shall be the sole and exclusive obligation of the Owner. Each Owner, at his own expense, may obtain on his Lot, or the improvements thereon, or the contents thereof, title insurance, homeowner's liability insurance, theft and other insurance covering improvements, betterment and personal property damaged and lost. In addition, risk of loss with respect to any improvements made by an Owner upon his Lot, shall be that of the Owner. Betterments coverage or "improvements insurance" shall be secured solely by an Owner wishing such coverage of his risk of loss, and the Association shall have no liability therefor.

Section Two. The Association's Property Insurance.

(a) If the Common Areas include any insurable property, the Association will obtain, maintain and pay the premiums, as a Common Expense, upon a "master" or "blanket" type policy of policies of property insurance covering the Common Areas, except (i) land, foundation, excavation, or other items normally excluded from coverage; (ii) all Buildings constructed upon Lots and all other improvements and betterments made to Lot by Owners at their expense; and (iii) personal property of Owners and lessees of Owners, their families, invitees and guests. Such coverage will also insure supplies, equipment and other personal property of the Association. The policy will be in an amount equal to one hundred (100%) percent of the current replacement cost of the Common Areas, exclusive of land, foundations, excavation, and other items normally excluded from coverage. A reasonable "deductible amount" not to exceed five percent (5%) of the policy face amount may be included at the discretion of the Board of Directors if available and if a material savings, as determined by the Board in its sole discretion, in premium cost results therefrom, but the deductible amount will be considered a Common Expense and borne by the Association as a whole, without regard to the number of Owners directly affected by a loss that is later incurred, and reserves will be established for the deductible.

(b) The name of the insured under the Association policy will be substantially as follows: "Maxwell Ridge Homeowners' Association." Loss payable provisions will be in favor of the Association and the Trustee, as a trustee for each Owner, and each such Owner's Mortgagee as the interests of such parties may appear. Each Owner and his respective Mortgagee, if any, will be beneficiaries of the policy in a percentage equal to the Percentage Interest attributable to the Lot owned by such Owner. All Association policies will contain a standard mortgagee clause, or equivalent endorsement (without contribution), which is commonly accepted by Institutional Mortgage investors in the area in which the Property is located, and which appropriately names all Institutional Mortgage holders or their servicers in such form as requested by such Institutional Mortgage holders of their servicers.

(c) All Association policies will be written with a company holding a general policyholder rating of "A" or better by Best's Insurance Reports and in a financial category of Class VI or better in Best's Key Rating Guide. Policies are unacceptable where (i) under the terms of the insurance carrier's charter, Bylaws or policy, contributions or assessments may be made against the Association, Owner's Mortgagee or the designees of Mortgagees; or (ii) by the terms of the carrier's charter, Bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members. Association policies may not be cancelable or substantially modified by any party without at least ten (10) days prior written notice to the Association.

(d) The Association will provide to Owners and/or Mortgagees requesting the same in writing a certificate of insurance, or a copy of the certificate of insurance, for the Association, for which the Association may charge reasonable copying costs.

Section Four. Association's Liability Insurance. The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a policy of comprehensive general liability coverage covering at a minimum all of the Common Areas. Coverage limits will be in amounts generally

required by private Institutional Mortgage holders for projects similar in construction, location and use to the Property; provided, however, that such coverage will be for at least One Millions and 00/100 (\$1,000,000.00) Dollars for bodily injury, including death of persons, and property damage arising out of a single occurrence. Coverage under this policy will include, without limitation, legal liability to the insured for property damage, bodily injury and death of persons in connection with the operation, maintenance and use of the Common Areas and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. If the policy does not include "severability of interest" in its terms, an endorsement will be included which precludes the insurer's denial of the claims of an Owner because of the negligent acts of the Association or another Owner. Such policy must provide that it cannot be canceled or substantially modified, by any party, without at least thirty (30) days prior written notice to the Association and each holder of an Institutional Mortgage listed as a scheduled holder of an Institutional Mortgage in the insurance policy.

Section Five. Association's Fidelity Bonds and Other Insurance. The Association may, but shall not be required to, obtain, maintain and pay the premiums, as a Common Expense, upon a blanket fidelity bond for all officers, directors, trustees and employees of the Association and other persons handling or responsible for funds belonging to or administered by the Association, including any professional management company assisting with the administration of the Association. The total amount of the fidelity bond coverage required will be based upon the best business judgment of the Board of Directors. Any fidelity bond that the Association shall, in its sole judgment, determine to secure will meet the following requirements: the Association will be named as an obligee; the bonds will contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and the bond will provide that it may not be canceled or substantially modified (including cancellation for nonpayment of a premium) without at least ten (10) days prior written notice to the Association and each holder of an Institutional Mortgage listed as a scheduled holder of an Institutional Mortgage in the fidelity bond.

The Association will obtain, maintain and pay the premiums, as a Common Expense, on a policy of directors and officers liability insurance in such amounts as determined by the Board of Directors.

The Board of Directors will be authorized on behalf of the Association to obtain and maintain such other and further insurance as the Board of Directors may determine from time to time.

Section Six. Authority to Adjust Association Loss. The exclusive authority to negotiate, settle and otherwise deal in all respects with insurers and adjust all losses under policies provided for the Association will be vested in the Board of Directors or its duly authorized agent for the benefit of all Owners and Mortgagees; provided, however, that all Owners and Mortgagees having an interest in such loss will be advised in advance of all actions anticipated to be taken of a material nature related to the adjustment of the loss. Each Owner, in accepting a deed to a Lot, expressly appoints the directors, and each of them, his due and lawful attorneys-in-fact, with full power of substitution, to act on behalf of the Owner as fully as the Owner could act in person on all matters related to the authority granted in this Article VI, Section Six, including executing all documents required in connection therewith on behalf of the Owner.

Section Seven. Association Insurance Trustee.

(a) The Board of Directors may, from time to time, designate a third party Trustee hereunder. The Trustee, whether the Board of Directors acting in said capacity, or a third-party designated by the Board, will serve the Association and the Owners and their Mortgagees (as their interests may appear) as provided herein. Any third-party Trustee, but not the Board of Directors acting in such capacity, will be entitled to receive reasonable compensation for services rendered which will be a Common Expense of the Association.

(b) All insurance policies obtained by the Association will name the Association and the Trustee as loss payees. Immediately upon the receipt by the Association of any insurance proceeds, the Association will endorse the instrument by means of which such proceeds are paid and deliver the instrument to the Trustee. The Trustee will not be liable for payment of premiums, for the renewal or the sufficiency of the policies or for the failure to collect any insurance proceeds. Nor will the Trustee have any obligation to inspect the Property to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person.

(c) Among other things, the duties of the Trustee will be to receive proceeds delivered to it, hold such proceeds in trust for the benefit of the Owners and their Mortgagees, and disburse the proceeds as hereinafter provided.

(d) Proceeds of insurance policies received by the Trustee will be disbursed as follows:

(i) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purposes, will be disbursed in payment for such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs will be paid to the Association for the benefit of all Owners and their Mortgagees, if any;

(ii) If it is determined, as provided in Section Nine below, that the damage or destruction for which the proceeds are paid will not be repaired or reconstructed, such proceeds will be disbursed to such persons as therein provided; and

(iii) Any and all disbursements of funds by the Trustee for any purpose whatsoever will be made pursuant to and in accordance with a certificate of the Association signed by the President and attested by the Secretary directing the Trustee to make the disbursements.

(e) The Trustee will not incur liability to any Owner, Mortgagee or other person for any disbursements made by it in good faith to and in accordance with the foregoing requirements.

Section Eight. Damage or Destruction to a Lot's Building. Each Owner covenants and agrees that in the event of damage in or destruction of the Building or other structures on his or her Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved by the Declarant during the Transition Period, and thereafter are approved by the Board of Directors. Alternatively, the Owner

shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition approved by the Declarant during the Transition Period, and thereafter approved by the Board of Directors. Should the Owner fail to clear the Lot of all debris and ruins and restore the Lot with attractive landscaping in keeping with the Common Element, the Association shall have the right to have such work performed and to specially assess such Owner for the cost thereof. Such amount owed shall be lien against the Lot. The Owner shall pay any costs which are not covered by insurance proceeds.

Section Nine. Damage and Destruction to Association Common Areas.

(a) Immediately after all or any part of the Property covered by Association insurance is damaged or destroyed by fire or other casualty, the Board of Directors or its duly authorized agent will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section Nine, means repairing or restoring the damaged Common Areas to substantially the same conditions in which it existed prior to the fire or other casualty.

(b) Any such damage or destruction will be repaired; provided, however, that should more than seventy-five percent (75%) of the Common Areas consisting of the Amenities, roads and other improvements be destroyed and the Members holding one hundred percent (100%) of the Total Percentage Interest vote to disapprove the rebuilding of the Common Areas voting in person or by proxy at a meeting at which a quorum is present, duly called, in whole or in part, for the purpose of disapproving such repair or reconstruction, then such reconstruction of the Common Areas shall not occur. If Common Areas are not reconstructed, all insurance proceeds will be delivered to the Association. Except as otherwise provided, any such damage or destruction in the Common Areas, will be repaired and reconstructed as promptly as practicable. No Mortgagee will have any right to restrict the use of insurance proceeds otherwise available for repair, reconstruction or rebuilding.

Section Ten. Insufficient Proceeds to Repair Damage to Association Property.

(a) If the damage or destruction for which Association insurance proceeds are paid to the Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, or if no insurance proceeds exist with respect to such damage or destruction, the Board of Directors will levy an Assessment against the Owners in sufficient amounts to provide funds to pay costs in excess of insurance proceeds for repair or reconstruction. Additional Assessments may be made at any time during or following the completion of any repair or reconstruction.

(b) Any and all sums paid to the Association under and by virtue of those Assessments provided for in subsection (a) of this Section Ten will be deposited by the Association with the Trustee. Such proceeds from insurance and Assessments, if any, received by the Trustee will be disbursed as provided in Section Seven above.

ARTICLE VIII
CONDEMNATION

Section One. General. Whenever all or any part of the Property will be taken by any authority

having the power of condemnation or eminent domain, each Owner will be entitled to notice thereof and shall have the right to negotiate, settle and otherwise deal in all respects with the condemning authority as to the taking of such Owner's Lot and the improvements thereon; provided, however, that the exclusive right to negotiate, settle and otherwise deal in all respects with the condemning authority as to the taking of the Common Areas and/or Common Elements will be vested in the Board of Directors or its duly authorized agent on behalf of the Association. Each Owner, in accepting a deed to a Lot, expressly appoints the directors, and each of them, his due and lawful attorneys-in-fact, with full power of substitution, to act on behalf of the Owner as fully as the Owner could act in person in all matters related to the authority granted in this Article VIII, Section One, including executing all documents required in connection therewith on behalf of the Owner. The award made for such taking will be payable to the Trustee. Unless otherwise required by law at the time of such taking, any award made therefore will be disbursed by the Trustee, as hereinafter provided in this Section One.

Section Two. Complete Taking. In the event the entire Property is taken by power of eminent domain, the Association and the members ownership of the Common Areas pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed by the Trustee to the Owners in proportion, and their respective Mortgagees and other lienholders as their interests may appear. Notwithstanding, each Owner shall have the right to negotiate, settle and otherwise deal in all respects with the condemning authority as to the taking of such Owner's Lot and the Building and other improvements which may located therein.

Section Three. Partial Taking of Non-Essential Areas. In the event less than the entire Property is taken by power of eminent domain and if the taking does not include any portion of the Common Areas, then the Board of Directors will be permitted to replace any nonessential improvements to the extent deemed appropriate and the Trustee will disburse the proceeds of such awards in the same manner as hereinabove provided for and in connection with the repair, reconstruction or rebuilding of improvements after damage or destruction, with all excess proceeds to be distributed to the Association.

Section Four. Partial Taking of Essential Areas. In the event less than the entire Property is taken by power of eminent domain and the taking includes any portion of a Lot or the Common Areas essential to the use of any Lot, then the following shall occur:

(a) Allocation of Award. As soon as practicable, the Board of Directors shall, reasonably and in good faith, apportion the condemnation award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The respective amounts apportioned to the taking of, or injury to, such portion of the Common Areas affecting primarily the use or enjoyment of one or more particular Lots and the improvements thereon (e.g. the taking of, or injury to, Common Areas immediately around one or more Lots which prevents such Lot from rebuilding their improvements or causes them to have to modify their improvements within their Lots because of changes in setbacks or otherwise), then the proceeds from such taking of, or injury to, as it affects such particular Lots shall be allocated and distributed to the Owners of such affected Lots;

(ii) The total amount apportioned to the taking of or injury to the Common Elements which equally affects the Owners of all Lots (such as the taking of, or injury to, the Amenities) shall be allocated among and distributed to all Owners in proportion;

(iii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Lots that have not been taken, in proportion to their respective percentage interests as adjusted for the removal of those Owners whose Lots have been taken;

(iv) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable; and

(vi) Distribution of allocated proceeds shall be made by the Association or the designated Trustee to the Owners and their respective Mortgagees as appropriate and as their interests may appear.

Section Five. Continuation and Reorganization. If less than the entire Property is taken by power of eminent domain, the Association and the ownership of the Common Areas by its members pursuant hereto shall not terminate, but shall continue. If any partial taking results in the taking of an entire Lot, the Owner thereof shall cease to be a Member of the Association and an Owner under this Declaration. The Association shall reallocate the voting rights and the undivided interest in the Common Areas appurtenant to such Lot in accordance with this Declaration.

ARTICLE IX

ARCHITECTURAL CONTROL

Section One. Approval Required for Buildings, and Interior Features. To preserve the original architectural appearance of the Project, the Property, and the Buildings' designs within the Lots, including architectural and engineering aspects, no construction, reconstruction or Lot or Building modification of any nature whatsoever, except as specified in this Declaration, will be commenced or maintained upon the Lot and to the Building located, or to be located thereon, nor will there be any change, modification or alteration of any nature whatsoever of the design and appearance of any surfaces or facades, nor will any Owner change the paint color on the exterior of any Building or change the roof, nor will any Owner change the design or color of the exterior lights, nor will any Owner construct, erect or attach to any part of the exterior any addition or change until after the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same will have been submitted to and approved in writing as to harmony of design, color and location in relation to the surrounding features by the Board of Directors and pursuant to original plans and specifications or design guidelines adopted therefore. Furthermore, such required approval by the Board of Directors shall extend to any landscaping installed by Owner within the Lot, as well as any interior features or aesthetic elements that are in plain view from outside a Building. The failure of an Owner to secure the required approval of the Board of Directors as aforesaid, or to take such action, remedial or otherwise, as the Board of Directors shall at any time determine to be required hereunder shall be subject to the authority and enforcement

powers of the Board of Directors as set forth in Article "X" below. The Board of Directors may delegate the architectural review functions to a committee, but enforcement of all violations shall remain with the Board of Directors.

ARTICLE X **MAINTENANCE**

Section One. Responsibility of Association. Except as specifically provided to the contrary herein, the Association will maintain the Common Areas, in first class condition in accordance with proper maintenance procedures applicable thereto and will enforce all warranties with respect to the Common Areas. In addition, the Association will repair or replace all parts of the Common Areas. Except as otherwise provided herein, the cost of such will be charged to the Owners as a Common Expense.

Section Two. Access to Lots. The Association will have the irrevocable right, to be exercised by the Board of Directors or its agent, which term includes the Association manager, to have reasonable access to each Lot from time to time, to undertake such action as it may determine, but for which it has no obligation, or for which it may be requested, to prepare and secure a Building in anticipation of storm or hurricane, provided the Association shall be under no obligation to an Owner to do so; and for the inspection, maintenance, repair or replacement of any of the Common Areas accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Areas, Lots. In addition, the Association shall have the right to enter upon each Lot, from time to time, for purposes of performing typical landscape maintenance services, including but not limited to the cutting and removal of weeds and grass, the removal of trash and rubbish, or any other maintenance of the Common Areas and the landscaped areas on the Lots not enclosed by a fence installed by Owner.

Section Three. Responsibility of Owner. In the event that the Board of Directors should determine that the need for maintenance or repairs by the Association as provided for in this Article X, Section Three is caused through the willful or negligent act of an Owner or the lessee of an Owner, their families, invitees or guests, or the Owner's pets, the cost of which is not covered or paid for by insurance, then the cost, both direct and indirect, of such maintenance or repairs will be added to and become a part of the Assessment to which such Owner and his Lot are subject. Each Owner will maintain, repair or replace at his own expense all the Building and other improvements upon the Lot which may become in need thereof. Further, each Owner will, at his/her/its own expense, maintain, repair and replace, when necessary, that heating and air- conditioning condensers and other such exterior appurtenances to such Owner's Building whether or not located within such Owner's Lot. Each Owner shall keep the exterior of his/her/its Building and other improvements in a neat well maintained "first class" condition. If the Owner does not make those repairs to his/her/its Building and/or other improvements required to be made by him within thirty (30) days from the date of receipt of written demand from the Association, the same may be repaired by the Association and the cost thereof will be assessed against the Owner and the Lot owned by such Owner as a Specific Assessment. In the event an Owner's Building is severely damaged by catastrophic event, such Owner shall commence to either repair and/or rebuild such Building or tear down the Building and grade and landscape the Building site within three (3) months of such catastrophic event. Should Owner fail to tear down its Building and grade and landscape the Building site or fail to commence reconstruction and repair of the Building within such three (3) month period, the Association shall have the right to tear down the Owner's Building and to grade and landscape the Building site and the cost thereof will be assessed against the Owner and the Lot

owned by such Owner as a Specific Assessment.

Section Four. Access, Ingress and Egress. All Owners, by accepting title to a Lot, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such property and acknowledge and agree that such access, ingress, and egress will be limited to roadways, sidewalks and walkways located within the Property from time to time, provided that pedestrian and vehicular access to and from all such property will be provided at all times. There is reserved unto Declarant, the Association, and their respective successors and assigns the right and privilege, but not the obligation, to install and maintain electronic gates controlling vehicular access to and from the Property, provided that reasonable steps are taken to facilitate the access of all Owners, guests, and other invitees. Neither the Declarant nor the Association will be responsible, in the exercise of its reasonable judgment, for the granting or denial of access to the Property in accordance with the foregoing.

Section Five. Declarant's Right to Develop. Notwithstanding anything herein contained to the contrary, the Declarant hereby reserves unto itself, its successors and assigns, the right and option to control any gate to the Property and to leave the gate in an open position for the unobstructed and uncontrolled passage of construction vehicles for persons engaged in both infrastructure and building construction activities. The within right, if exercised, will be limited to the hours of 6 a.m. to 6 p.m. and will terminate upon expiration of the Transition Period.

ARTICLE XI

LOT RESTRICTIONS

Section One. Lots. All Lots will be, and the same are hereby restricted exclusively, for residential use, provided, however, a Lot's Building may be used as a combined residence and executive or professional office by the Owner hereof so long as no rental management activities are conducted from the Lot, Building upon a Lot, and so long as such use does not interfere with the quiet enjoyment by other Owners and does not include visitation by clients, or unreasonable levels of mail, shipping, storage or trash requirements. No immoral, improper, offensive or unlawful use will be made of any Lot or Building and no use or condition will be permitted which is a source of unreasonable noise or interference with the peaceful possession and quiet enjoyment of any other portion of the Property by other Owners or lessees of Owners, their families, invitees and guests. All Lots and the Buildings thereon or therein will be kept in a clean and sanitary condition and no rubbish, refuse or garbage will be allowed to accumulate. No fire hazard will be allowed to exist and no use or condition will be permitted which will increase any rate of insurance related to the Property. In addition, all Owners, guests of Owners, lessees of Owners, renters, their families, invitees and guests will abide by all Rules and Regulations in effect from time to time governing the use of Lots and Buildings.

Section Two. Animals and Pets. No animals, livestock or poultry of any kind will be raised, bred or kept on any part of the Property, except that dogs, cats or other normal household pets may be kept by the respective Owners inside their respective Buildings provided that (i) the Board of Directors may, in its sole discretion, establish by rule that dogs of a certain breed are potential hazards to the Association and its members and are deemed not to be normal household pets; (ii) the Board of Directors may establish reasonable rules and regulations to insure that all permitted pets are properly licensed and inoculated for rabies and such other disease for which inoculation is necessary for that breed of pet; (iii) an Owner execute a written indemnification and hold harmless agreement in favor of the Association and the Association's management

company, in form and content satisfactory to counsel for the Board, prior to bringing the Owner's pet upon the Property; (iv) permitted pets are not kept, bred or maintained for any commercial purpose and do not create any health hazard or, in the sole discretion of the Board of Directors, unreasonably disturb the peaceful possession and quiet enjoyment of any other portion of the Property by other Owners and lessees of Owners, their families, invitees and guests and (v) the Board may establish reasonable rules to limit the number of such allowed pets. Pets shall be kept on a leash at all times when outside a Building, and the Owner shall clean up after his or her pet. Any occupant of a Lot or Building other than the Owner shall be prohibited from keeping animals, including household pets on the Lot, or in the Building.

Section Three. Antennas. No television antenna, radio receiver, or other similar device will be attached to or installed on any portion of the Building and other improvements upon the Lot, by an Owner, except as required by the Telecommunications Act of 1996 and implementing rules therefore issued by the Federal Communications Commission and by the Association in conformity with rules or guidelines of the Federal Communications Commission; provided, however, the Declarant and the Association, and their successors and assigns, will not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within the Properties.

Section Four. Leasing of Lots. An Owner of a Lot will have the right to lease or rent his Lot and the Building upon such Lot on a bi-annual or annual basis subject to applicable local ordinances, provided, however, that no rental management activities may be conducted from the Lot or the Building, and provided that all leases and rental contracts will require the lessee to abide by all conditions and restrictions placed on the use and occupancy of the Lot, by this Declaration. The Board of Directors will have the right to approve the form of all such leases and rental contracts at any time if it elects to do so. Occupancy by a tenant or renter under any such approved form of lease or rental contract is subject to continuing approval of the Board thereunder, which may be removed at any time by the Board for any violation by any such tenant or renter of the Rules and Regulations of the Association. IN ORDER TO PROMOTE HEALTH, SAFETY AND WELFARE OF THE PROPERTIES, THE OWNERS AND THEIR RENTAL GUESTS AND INVITEES, EACH LOT, THE BUILDING UPON EACH LOT, AND THE COMMON AREAS ARE HEREBY RESTRICTED SUCH THAT THE USE AND/OR RENTAL OF ANY AND ALL LOTS, THE BUILDING UPON SUCH LOT, AND THE COMMON AREAS ARE HEREBY RESTRICTED SUCH THAT THE USE AND/OR RENTAL OF ANY AND ALL LOTS AND BUILDING UPON THE LOTS, AND THE COMMON AREAS SHALL BE SUBJECT TO THE FOLLOWING TWO RESTRICTIONS:

- (1) Prior to occupying any Building upon any Lot, or making use of any part of the Common Areas, including, without limitation, the roads, pools, recreational amenities and parking premises, all rental guests and other invitees who are not accompanied by the Owner during their stay shall first register (hereinafter the "Registration Requirement") their names, addresses, automobile license plate numbers, if any, length of stay, and rental occupancy with the on-site access management entity (the "Company") that has been designated by Declarant. The Registration Requirement set forth herein shall also expressly apply to any and all persons entering the Association property for purposes of providing food, beverages and other services to the Owners of Lots, Buildings, their tenants paying guests, or invitees, including,

without limitation, pizza delivery, cleaning and laundry service, rental management services and/or repair and trash service.

- (2) Prior to a Building being occupied or used by a tenant, paying guest, or invitee, access through the front door of each such Building must be controlled by a door lock and fob system (hereinafter the "Centralized Access Requirement") that has been issued by the Company and installed on the front door of the Building upon the Lot, which combination door lock and fob system will allow: (a) emergency access to the Building upon each Lot; and (b) the occupants of rental units to obtain access to those pools and other recreational amenities that are available to the occupants of rental units. No Lot or Building may be rented or occupied or accessed by a tenant, paying guests or invitee until the Registration Requirement and the Centralized Access Requirement of this Section have been met.

Section Five. Motor Homes, Trailers, Boats, etc. All vehicles will be parked on a Lot, or in parking spaces within the Common Areas. The Association shall have the power to impose Rules and Regulations prohibiting or otherwise controlling the storage or parking upon any portion of the Property of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices (but specifically excluding golf carts which shall be deemed in the same manner as passenger automobiles), provided, however, the Association rules regarding storage or other parking must not allow such mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices to be visible from the adjoining street.

Section Six. Signs. Except as may be required by law or by legal proceedings, no signs or advertising posters of any kind, including, but not limited to, "For Rent," "For Sale," and other similar signs, shall be erected by an Owner, the Association, or any agent, broker, contractor or subcontractor thereof, nor shall any sign or poster be maintained or permitted on any Building window, or within a Building and viewable through any window, or on the exterior of any improvements or on any unimproved portion of property located within the Property, without the express written permission of the Declarant during the Transition Period, and thereafter without the written permission of the Board of Directors. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the party entitled to approve the same and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Article XI, Section Seven shall not apply to the Declarant or to any person having the prior written approval of the Declarant. In addition, the Declarant and/or Association shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas in accordance with architectural design standards adopted therefor and approved by governmental authority with jurisdiction thereof. Notwithstanding any other provision herein, under no circumstances shall an Owner, the Association, or any agent, broker, contractor or subcontractor post any sign or other indication on a Lot, a Building on a Lot, or Common Areas, that such Lot, or Building is "For Rent", "For Let", or other similar message.

ARTICLE XII EASEMENTS

Section One. Encroachments. If any portion of the Common Areas encroaches upon any Lot or as a result of variances from the Site Plan and/or Survey, an easement will exist for the encroachment and for the maintenance of the same so long as the improvements comprising a portion of the Common Areas continue to encroach upon such Lot(s). If the improvements comprising a portion of the Common Areas will be partially or totally destroyed as a result of fire or other casualty or a result of eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Areas upon any Lot(s) due to such rebuilding, will be permitted, and valid easements for such encroachments and the maintenance thereof will exist so long as the improvements remain.

Section Two. Utilities, etc. There is hereby granted a blanket easement upon, across, over and under all the Property for ingress, egress, installation, replacing, repairing and maintaining a master television antenna or CATV system and all utilities, including, but not limited to water, gas, sewers, telephones and electricity, and other forms of telecommunication and technology cabling, now existing or developed in the future. Such easements grant to appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the Property. In addition, the Board of Directors will be entitled to grant additional permits, licenses, and easements over the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance and operation of the Property.

Section Three. Easement for Construction. Notwithstanding anything herein to the contrary, Declarant and persons designated by the Declarant will have an easement to enter upon and cross over the Common Areas for purposes of ingress and egress to all portions of the Property; to use portions of the Common Areas and any Lots owned by the Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Property; and to maintain and correct drainage of surface, roof or storm water.

Section Five. Easement for Inspection by Declarant. Notwithstanding anything herein to the contrary, Declarant and persons designated by the Declarant will have an easement to enter upon and cross over the Common Areas for purposes of ingress and egress to all portions of the Property; as well as an easement for reasonable access to each Lot as the Declarant may find desirable, for the inspection of the whole or any portion of the Property, its Lots, the Buildings thereon or therein, the Common Areas, the components and structural parts thereof, as well as their maintenance requirements and the maintenance performed thereon to the date of any such inspection. Nothing herein shall require the Declarant to perform any such inspection, but if the Declarant does undertake any such inspection, Declarant shall provide to the Board of Directors a copy of its findings or the inspection report produced therefrom. Nothing herein shall relieve the Board from engaging a professional inspector to perform an annual maintenance audit as part of the Board's annual budgeting process under Article XII, Section Four above.

Section Six. Easement for Sales Purposes. Declarant and persons designated by the Declarant will have an easement to maintain one or more sales offices, management offices and models throughout the Property and to maintain one or more advertising signs on the Common Areas

while the Declarant is selling Lots in the Property, or any contemplated expansion thereof. Declarant reserves the right to place model home Buildings, management offices and sales offices on any Lots, owned or leased by Declarant and on any portion of the Common Areas in such number, of such size and in such locations as Declarant deems appropriate. So long as Declarant will be selling Lots in the Property or any contemplated expansion thereof, Declarant will have the right to restrict the use of a reasonable number of parking spaces, for purposes including, but not limited to, the providing of spaces for use by prospective Lot purchasers, Declarant's employees and others engaged in sales, maintenance, construction or management activities.

Section Seven. No View Easements. No view easements, express or implied, will be granted to any Owner in connection with the conveyance of a Lot to such Owner.

Section Eight. Other. There is hereby granted to the Association, its directors, officers, agents and employees and to any manager employed by the Association and to all policemen, firemen, ambulance personnel, and all similar emergency personnel, an easement to enter upon the Property in any part thereof in the proper performance of their respective duties. Except in the event of emergencies, the rights under this Article XII, Section Eight will be exercised only during reasonable daylight hours, and then, whenever practicable, only after advance notice to the Owner or Owners affected thereby.

ARTICLE XIII

THE DEVELOPMENT PLAN FOR THE PROPERTY

Section One. Phase I. Phase I of the Property is initially composed of Cane Bay, known as Lots 1-16 as well as the Common Areas, and is more fully described in the herein and on Exhibit "G" attached hereto, as well as in the Site Plan. Each of the Lots shall have one (1) Building constructed therein and thereon.

Section Two. Reservation of Right to Expand and Contract. Anything to the contrary contained in this Declaration notwithstanding, at any time on or before January 1, 2041, the Declarant will be entitled, but not required, to expand the property which is the subject of this Declaration by including any of the property described in Exhibit "B" attached hereto, and to contract the property which is subject to this Declaration in accordance with these expansion and contraction rights as provided in Article I, Section Two, above and in this Article XIII, Section One.

(a) Contraction; Withdraw of Unimproved Common Areas. During the period in which the Class B membership exists, the Declarant is entitled to subdivide portions of the Common Areas from the Properties, upon which no Lots have been created, and to remove the subdivided portion from the application of this Declaration by filing one or more amendments to this Declaration including amendments to the Exhibits where necessary (a "Contraction Amendment"). A Contraction Amendment will be executed solely by the Declarant for itself and as attorney in fact for all Owners and shall be effective upon recording in the Hoke County Public Registry.

Section Three. Declarant's Reservation of Right to Modify Owned Lots. The Declarant shall have the right, so long as it owns any Lot, to modify each such Lot and the Building, provided, however, the aggregate Percentage Interest assigned to the Lots so affected will not change. The Declarant shall effect such modification for a Lot by filing an amended plat ("Lot Modification Plat"). A Lot Modification Plat will be effective upon recording such amendment in the Hoke County Public Registry.

Section Four. Amenities; Required Expansion. Amenities may be constructed as part of the expansion of the property which is subject to this Declaration, but the Declarant shall not be required to do so. Any Amenities shall be constructed at the option of the Declarant in its sole and absolute discretion and no covenant, representation or warranty is made herein that any Amenities will be constructed. No Owner will have the right to require construction or addition of any land, Amenities, Lots, Buildings, or other improvements or property under any circumstances.

Section Five. Assignability of Rights. The Declarant may assign the rights reserved in this Article XIII to any person or entity by an instrument recorded in the Hoke County Public Registry.

Section Six. Application of Declaration. Any Expansion Amendment, Contraction Amendment, Lot Modification Plat ("Declarant Amendments") may be filed separately or in concert as one amendment. Upon the filing of a Declarant Amendment prescribed by herein, all definitions contained in the Declaration will be deemed amended to the extension necessary to cause the addition of real property and the improvements described in such amendment to be treated as fully an integral part of the property which is subject to the Declaration.

Section Seven. No Consent Required. Subject to the time limit set forth in herein, the Declarant, its successors and assigns, will have the absolute right to effect an expansion or contraction of the property which is subject to the Declaration, or a modification of a Lot in accordance with this Article XIII and to file Declarant Amendments to this Declaration without any action or consent on the part of any Owner or Mortgage holder; provided, however, that to the extent any action on the part of any Owner is required by any third party to assure the expansion of the property which is subject to the Declaration as provided in this Article XIII, each Owner, in accepting a deed to a Lot, agrees to undertake such actions and/or provide such consents as are reasonably requested, and expressly appoints the Declarant his due and lawful attorney in fact with full power of substitution, to execute all documents reasonably required to evidence the requisite action or consent.

ARTICLE XIV

TRANSITION PROVISION

Section One. Appointment of Directors and Officers.

(a) The Declarant shall have the right to appoint or remove any or all members of the Board of Directors and any or all officers of the Association until such time as the first of the following dates: (i) January 1, 2041; (ii) after the conveyance by the Declarant, in the ordinary course of business to persons other than a successor

developer, or development/construction lender for the Declarant or successor developer pursuant to a foreclosure or deed-in-lieu of foreclosure, of one hundred percent (100%) of the maximum number of Lots to be contained in all Phases of the Properties; or (iii) the date the Declarant surrenders its authority to appoint directors of the Association by an express amendment to any Declaration executed and filed of record by the Declarant.

(b) After the expiration of the Declarant's right to appoint under both subparagraph (a) above, and notwithstanding anything contained herein to the contrary, the Declarant shall, nevertheless and so long as it holds one or more Lots included in the property which is subject to this Declaration, have the right to appoint one (1) member of the Board of Directors.

Section Two. Special Meeting to Elect Board. Within sixty (60) days after the date on which Owners other than the Declarant become entitled pursuant to this Article XIV to elect members of the Board of Directors of the Association, the Association will call, and give not less than thirty (30) days and not more than sixty (60) days notice of, a special meeting of the Members to elect the Board of Directors. The existing board members appointed by the Declarant shall remain on the Board of Directors with full authority and control until their elected successors take office. In the event such an appointed board member is no longer able or willing to serve prior to his or her elected successor takes office, the Declarant may appoint an interim board member until such elected successor takes office.

Section Three. Cooperation. The Association will cooperate with the Declarant to the extent reasonably requested by the Declarant during and after the Transition Period and promote the completion of construction of all improvement comprising a portion of the Common Areas, as well as the sale and marketing of unsold Lots and Buildings on the Properties.

Section Four. Controlling Provisions. In the event of my inconsistency between this Article XIV and the other provisions of this Declaration, this Article XIV will be controlling and binding on all parties having an interest in the Association or the Properties.

ARTICLE XV **ALTERNATIVE DISPUTE RESOLUTION**

Section One. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Declarant, Association, Owners, and any person not otherwise subject to this Declaration who agrees to submit to this Article XV (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes between and among themselves involving the Declaration, the Property or the Properties, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances and disputes (including those in the nature of counterclaims or cross-claims) between Bound Parties involving the Declaration, Property, Properties, Lots, or Buildings, including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section Two are subject to the procedures set forth in Section Three.

Section Two. Exempt Claims. The following Claims ("Exempt Claims") are exempt from the provisions of Section Three:

- (a) any suit by the Association against any Bound Party to enforce any Assessments or other charges hereunder; and
- (b) any suit by the Association or under the Master Declaration to obtain a temporary restraining order (or equivalent emergency equitable relief) and other relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association or under the Master Declaration until the matter may be resolved on the merits pursuant to Section Three below; and
- (c) any suit between Owners which does not include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Association and the Property; and
- (d) any alternative dispute resolution mediation or arbitration between an Owner and the Declarant pursuant to the Real Estate Purchase Agreement between them or with respect to the Lot upon which are within which a Building is constructed and sold as part of the Lot thereunder; and
- (e) any suit in which an indispensable party is not a Bound Party; and
- (f) any suit which otherwise would be barred by any applicable statute of limitation; and
- (g) any suit involving a matter which is not an Exempt Claim under (a) or (b) above, but as to which matter the Bound Party against whom the Claim is made waives the mandatory provisions of Section Three below.

Any Bound Party having an Exempt Claim may submit to the alternative dispute resolution procedures set forth in Section Three, but there is no obligation to do so.

Section Three. Mandatory Procedures for Non-Exempt Claims. Any Bound Party having a Claim ("Claimant") against a Bound Party involving the Declaration, or all or any combination of them ("Respondent"), other than an Exempt Claim under Section Two, will not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of the Claim until it has complied with the procedures set forth in Exhibit "E", and then only to enforce the results thereof.

Section Four. Litigation. No judicial or administrative proceeding with an amount in controversy exceeding \$25,000.00, will be commenced or prosecuted by the Association unless approved by seventy-five percent (75%) or more votes of the entire Association, by referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required for any such meeting. This Section will not apply, however, to (a) actions brought by the Association to enforce the collection of assessments, including the foreclosure of liens, as well as the enforcement of other provisions of the Declaration, except where it is asserted that the Declarant is in violation of any provision of

the Declaration other than a violation of its requirement to pay Assessments or to fund operating shortfalls; (b) proceedings involving challenges to ad valorem taxation; (c) counterclaims brought by the Association in proceedings instituted against it; or (d) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section Four will not be amended unless the amendment is approved by both the Declarant and the requisite percentage of votes of Members of the Association, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this Article XV and the procedures therefore set forth in Exhibit "E", if applicable.

Section Five. Miscellaneous Alternative Dispute Resolution Provisions.

(a) Conflicting Provisions. Any conflict of discrepancy between the terms and conditions set forth in this Article XV and the procedures set forth in Exhibit "E" and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, and procedures and remedies set forth herein and Exhibit "E" will control.

(b) TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this Article XV will be strictly adhered to. TIME BEING OF THE ESSENCE hereof.

ARTICLE XVI
GENERAL PROVISIONS

Section One. Adherence to Provisions of Declaration, Bylaws and Rules and Regulations. Every Owner who rents his Building upon a Lot, must post inside his Building a list of the Rules and Regulations of the Association applicable thereto. Any rental agency handling an Owner's rental must further agree to abide by the Rules and Regulations and will be responsible for informing persons renting through its agency of any breaches of the Rules and Regulations by said persons and for taking any and all necessary corrective action. Should a particular agency or person continue not to take corrective action against the renters it has contracted with, or refuse to cooperate with the Association in the enforcement of its Rules and Regulations or other provisions of the Association Documents, the Association may require the Owner to cease using the services of that particular rental agency. Refusal to do so may result in fines against the Owner in an amount to be determined by the Board of Directors. Any fines will be added to and become part of the Assessment against the Lot and the Owner.

Section Two. Amendment. Amendments to this Declaration, except Declarant Amendments set forth in Article XIII and as herein expressly provided to the contrary, will be proposed by the Board of Directors in accordance with the following procedure:

(a) Notice. Notice of the subject matter of the proposed amendment or amendments will be included in the notice of the meeting of the Association at which such proposed amendment or amendments are to be considered.

(b) Adoption. The Declaration may be amended at any time from time to time at a meeting of the Association called in accordance with the Bylaws and this Declaration upon the vote of Members holding sixty-seven percent (67%) or more of the total vote in the Association; provided, however, that if the Association will vote to amend the Bylaws in any respect, such amendment will be set forth in an amendment to this Declaration and will be valid only when approved by Members holding more than sixty-seven percent (67%) of the total vote in the Association.

(c) Nondiscrimination. Irrespective of the foregoing, no amendment will (i) alter the Percentage Interest applicable to each Lot (except as permitted in accordance with provisions hereof); (ii) discriminate against any Owner or against any Lot or class or group of Lots, unless in each instance all Owners adversely affected thereby expressly consent thereto in writing.

(d) Necessary Amendments. Notwithstanding any other provisions of this Declaration to the contrary, if any amendment is necessary during the Transition Period in the judgment of the Board to cure any ambiguity or to correct or supplement provisions of this Declaration that are defective, missing or inconsistent with any other provision thereof, or if such amendment is necessary to conform to the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or other secondary Mortgage market lenders, guarantors or insurers with respect to condominium projects, then at any time and from time to time the Board may effect an appropriate corrective amendment without requiring the vote of the Members.

(e) Recording. A copy of each amendment provided for in this Article XVI will be certified by the Association as having been duly adopted and will be effective when recorded.

(f) Approval of the Declarant. In recognition of the fact that certain provisions of this Declaration are for the benefit of the Declarant, no amendment in derogation of any right reserved or granted to the Declarant by provisions of this Declaration may be made without the written approval of the Declarant and any attempt at such shall be a nullity and without effect on the terms, provisions, rights and reservations within this Declaration until such written approval has been obtained and recorded with the amending instrument. Except with respect to Declarant Amendments, the Declarant's written consent, to be withheld in its sole and absolute discretion, shall be required for any amendment to this Declaration to be effective during the Transition Period and such written consent must be attached to the instrument and recorded therewith.

Section Three. Covenants Running with the Land. All provisions of this Declaration will be construed to be covenants running with the land, and with every part hereof and interest therein, including, but not limited to every Lot and the appurtenances thereto; and each and every provision of this Declaration will bind and inure to the benefit of the Developer and all Owners and claimants of the Association or any part thereof or interest therein, and their heirs, executors administrators, successors and assigns.

Section Five. Enforcement. Each Owner will comply strictly with the Association Documents, as the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed to his Lot. Failure to comply with any of the same will be grounds for an action to recover sums due for damages or injunctive relief or for all three maintainable by the Board of Directors on behalf of the Association or by any aggrieved Owner. In addition, the rights of any Owner or lease of an Owner, the families, invitees or guests to use and to enjoy the Common Areas may be suspended by the Board of Directors. Failure by the Association or any Owner to enforce any of the forgoing will in no event be deemed a waiver of the right to do so thereafter.

(a) Authority and Enforcement. Upon the violation of the Association Documents, including, without limitation, the failure to timely pay any Assessments, the Board will have the power (i) to impose reasonable monetary fines which will constitute an equitable charges and a continuing lien as a specific Assessment, (ii) to suspend an Owner-Member's right to vote in the Association, or (iii) to suspend an Owner's, or Lot occupant's right to use any of the Common Areas. The Board will have the power to impose all or any combination of these sanctions, and may establish each day a violation remains uncured as a separate violation for which a fine is due; provided, however, an Owner's access to its property over the private roads and streets constituting Common Areas will not be terminated hereunder. An Owner, or Lot's occupant will be subject to the foregoing sanctions in the event of such a violation by such Owner, or Lot's occupant. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

(b) Procedure. Except with respect to the failure to pay Assessments, the Board will not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other occupant of the Project for violations of the Association Documents, unless and until the Board has given notice to the Owner responsible for such violation and such Owner has been given reasonable opportunity to correct a violation that may be cured. No such notice and cure period need be given for continuing violations of the same provision in this Declaration or of the same Rule or Regulation of the Association.

Section Six. Severability. All provisions of this Declaration and all of the Association Documents will be construed in a manner that complies with the laws, specifically including the Act, to the fullest extent possible. If all or any portion of any provision of this Declaration or any other Association Documents will be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision hereof or thereof, and such provision will be limited and construed as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

Section Seven. Gender or Grammar. The singular whenever used herein will be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, will in all cases be assumed as though in each case fully expressed. In addition, the use of the terms "herein" or "hereof" will mean this Declaration and not merely the Section or paragraph in which such term is utilized.

Section Eight. Headings. All Section headings are utilized merely for convenience and will not restrict or limit the application of the respective Sections.

Section Nine. Powers of Attorney. By acceptance of a deed or other conveyance of an interest in a Lot, all Members do hereby grant, and if further required, do agree to vote in a manner to provide to, and to ratify and confirm retention by, Declarant of Declarant's rights under this Declaration, including, without limitation, the right to amend this Declaration in accordance with the provisions hereof. In connection with this voting agreement, each Member appoints Declarant as proxy for such member with full power of substitution to vote for the Member on all such matters on which the Member may be entitled to vote, and with respect to which there is a reservation or designation of voting rights in Declarant under this Declaration, and with all powers which the member would possess if personally present at any meeting of Members. Such appointment will be, upon acceptance of a deed or other conveyance by the Member and without the necessity of further action by the Declarant or the member, a power coupled with an interest and will be irrevocable. Such appointment will be effective as of the date on which a deed or other conveyance of an interest to the Member is recorded in the Hoke County Registry. This irrevocable proxy will automatically terminate upon the termination of the Declarant's Transition Period. The within voting agreements and proxy are in addition to, and not in substitution of, all rights of Declarant herein provided, which will run with the land.

Section Ten. Lot Deeds. In accepting a deed to any Lot, the grantee will be deemed to have accepted and agreed to all terms and conditions contained in this Declaration and the Exhibits, as amended, and further agrees to execute any and all documents reasonably requested by the Declarant or the Association from time to time to expressly evidence the foregoing.

Section Eleven. Conflicts. In the case of any conflict between the Articles of Incorporation and the Declaration, the Articles of Incorporation shall control; in the case of any conflict between the Declaration and the Bylaws, the Declaration shall control; and in the case of any conflict between the Declaration and any required term or condition imposed by the laws of North Carolina, upon the Association and/or the governance of the Association, the provisions of the law shall control.

ARTICLE XVII

EXHIBITS

Section One. Exhibits Attached. The following Exhibits are attached hereto and incorporated verbatim in this Declaration by reference as fully as if set forth herein.

<u>Description</u>	<u>Identification</u>
Description of Property	A
Articles of Incorporation of Association	C
Bylaws of the Association	D

Alternative Dispute Resolution Procedures


E

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed to be effective as of this 3RD day of AUGUST, 2021.

DEVELOPER:

HUFF ROKOSKI DEVELOPMENT, LLC,
a North Carolina limited liability company

By: 
Name: MICHAEL J ROKOSKI
Its: MANAGER

STATE OF NORTH CAROLINA)
COUNTY OF New Hanover)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 3rd day of August, 2021, by Michael J. Rokoski, as Manager of **HUFF ROKOSKI DEVELOPMENT, LLC**, a North Carolina limited liability company, on behalf of the company.

Jason D Cline
Notary Public
New Hanover County, NC
My Commission Expires 01/06/2026

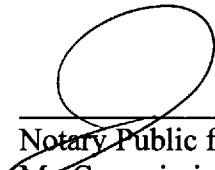

[L.S.]
Notary Public for North Carolina
My Commission Expires: 1-6-2026

Exhibit "A"

Description of Property

BEING ALL Of Lots 1 through 6 and 11 through 16 Maxwell Ridge as described on a Survey of Maxwell Ridge Phase I, Quewiffle Township, Hoke County, North Carolina, dated July 13, 2021 as recorded on July 23, 2021 in Book 04159, Page 0004 of the Hoke County, North Carolina, Register of Deeds Office, Raeford, North Carolina.

Exhibit "B"

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Exhibit "C"

Articles of Incorporation

Exhibit "C"

**State of North Carolina
Department of the Secretary of State**

**ARTICLES OF INCORPORATION
NONPROFIT CORPORATION**

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

1. The name of the nonprofit corporation is: MAXWELL RIDGE HOMEOWNERS ASSOCIATION INC.

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

3. The name of the initial registered agent is: MICHAEL J ROKOSKI.

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

Number and Street: 122 SALTWATER LANDING DR
City: HAMPSTEAD State: NC Zip Code: 28443 County: PENDER

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

Number and Street or PO Box: PO BOX 1388
City: HAMPSTEAD State: NC Zip Code: 28443 County: PENDER

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

Name	Address
<u>MICHAEL J ROKOSKI</u>	<u>PO BOX 1388, HAMPSTEAD, NC 28443</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

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

a. ☒ The corporation will have members.

b. ☐ The corporation will not have members.

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

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

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

Principal Office Telephone Number: 910-315-6200

Number and Street: 122 SALTWATER LANDING DR

City: HAMPSTEAD State: NC Zip Code: 28443 County: PENDER

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

Number and Street or PO Box: PO BOX 1388

City: HAMPSTEAD State: NC Zip Code: 28443 County: PENDER

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

Name	Address	Title

11. (Optional): Please provide a business e-mail address: MJROKOSKI@GMAIL.COM

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

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

This is the 3RD day of AUGUST, 2021.

MAXWELL RIDGE HOMEOWNERS ASSOCIATION INC

Incorporator Business Entity Name

Signature of Incorporator

MICHAEL J ROKOSKI, PRESIDENT

Type or print Incorporator's name and title, if any

NOTES:

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

**PROVISIONS REGARDING THE DISTRIBUTION OF MAXWELL RIDGE HOMEOWNERS
ASSOCIATION INC.'S ASSETS UPON DISSOLUTION**

The Association may be dissolved by an affirmative vote of at least seventy five percent (75%) of the membership and the affirmative vote of the Declarant, its successors and assigns.

Upon dissolution, and after all liabilities and obligations of the Association are paid and discharged, or adequate provisions made therefor, and after assets of the Association which are held upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, have been returned, transferred, or conveyed in accordance with such requirements, then the members shall receive a proportionate share of the Association's assets based upon the ratio of the number of units owned by said member to the total number of units owned by all members.


Michael J. Pokoski 8/3/21


Exhibit "D"

By-Laws of the Association

BYLAWS
OF
MAXWELL RIDGE HOMEOWNERS ASSOCIATION, INC.

ARTICLE I
NAME AND LOCATION

The name of the corporation is MAXWELL RIDGE HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association." The principal office of the corporation shall be located at

2919 BREELEWOOD AVE STE 400, FAYETTEVILLE NC 28303, but meetings of members and directors may be held at such place or places within the State of North Carolina, as may be designated by the Board of Directors.

ARTICLE II
DEFINITIONS

Section 1. "Association" shall mean and refer to MAXWELL RIDGE HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area and shall include all improvements thereon.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to HUFF ROKOSKI DEVELOPMENT, LLC, its successors and assigns, if such successors or assigns should acquire all of the Declarant's interest in the Properties.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions applicable to the Properties recorded in the Office of the Register of Deeds of Hoke County.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

ARTICLE III MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of conveyance of the first unit to a homeowner, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 7:30 p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice; provided, however, that written notice of any meeting called for the purpose of taking any action authorized under Section (4) or (5) of Article V of the Declaration shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting. Such notice shall specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary prior to the date and time scheduled for any meeting for which a proxy is to be used. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

ARTICLE IV
BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by an initial Board of three (3) Directors who need not be Members of the Association. The number of Directors may be changed by amendment of the Bylaws. At the first annual meeting the number of Directors shall be increased to five (5). The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

<u>NAME</u>	<u>OFFICE</u>
<u>MICHAEL ROKOSKI</u>	President
<u>MICHAEL ROKOSKI</u>	Vice-President
<u>MICHAEL ROKOSKI</u>	Secretary/Treasurer

Address of each initial Director/Officer:

PO BOX 1388 HAMPSHIRE NC 28443

At the first annual meeting, the Members shall elect two (2) Directors for a term of one (1) year and three (3) Directors for a term of two (2) years, and at each annual meeting thereafter, the Members shall elect for a term of two (2) years the number of Directors whose terms are expiring.

Section 2. Term of Office. At the first annual meeting, the members shall elect two (2) directors for a term of one (1) year and three (3) directors for a term of two (2) years, and at each annual meeting thereafter, the members shall elect for a term of two (2) years the number of directors whose terms are expiring.

Section 3. Removal. Any director may be removed by the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation, or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V
NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held every two (2) months without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations.

(c) exercise for the Association all powers, duties, and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

(b) supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained;

- (h) cause the exterior of the dwellings to be maintained.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice president, who shall, at all times, be members of the Board of Directors; a secretary, a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board, and each shall hold office for one (1) year, unless he/she shall sooner resign, shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time, giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he/she replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

- (a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and absent some resolution from the Board of Directors specifying otherwise shall co-sign all checks and promissory notes.

Vice President

(b) The vice president shall act in the place and stead of the president in the event of his absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the members of the Association, together with their addresses; and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; absent some resolution from the Board of Directors specifying otherwise shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

ARTICLE IX
COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X
BOOKS AND RECORDS

The books, records, and papers of the Association shall, at all times during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation, and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI
ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association monthly and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within fifteen (15) days after the due date, a late charge of \$15.00 shall be added to it and the assessment shall bear interest from the date of delinquency at the rate of twelve (12%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property,

and interests, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

ARTICLE XII
CORPORATE SEAL

The Association shall have a seal in circular form, having within its circumference the words: MAXWELL RIDGE HOMEOWNERS ASSOCIATION, INC.

ARTICLE XIII
AMENDMENTS

Section 1. These Bylaws may be amended at a regular or special meeting of the members by a vote of a majority of a quorum of Members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XIV
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting President of MAXWELL RIDGE Homeowners Association, Inc., a North Carolina nonprofit corporation; and

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on AUG, 3, 2021.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 3RD day of AUG, 2021.


MICHAEL J. POROSKI, President

Exhibit "E"

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

1. **Mandatory Procedures for Non-Exempt Claims.** Any Claimant with a Claim against a Respondent shall comply with the following procedures.

1.1 **Notice.** Within a reasonable time after the Claim in question has arisen, and each event prior to the date when institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitation, Claimant will notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(a) The nature of the Claim, including applicable date, time, location, Persons involved, Respondent's role in the Claim and the provisions of the Association Documents or other authority out of which the Claim arises.

(b) What Claimant wants respond to do or not to do to resolve the Claim; and

(c) That Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss, in good faith, ways to resolve the Claim.

12 **Negotiation.**

(a) Each Claimant and Respondent (the "Parties") will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation, not later than 30 days following the Notice, unless otherwise agreed by the Parties.

(b) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint an attorney licensed to practice law in the State of North Carolina to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes his or her efforts will be beneficial to the Parties. Such an attorney will have been actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments and will not have a conflict of interest with any of the Parties.

13 **Final and Binding Arbitration.** If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiation"), a Claimant will have 30 days within which to submit the Claim to binding arbitration under the auspices and the Commercial Arbitration Rules of the American Arbitration Association; and in accordance with the substantive and procedural laws of the state of North Carolina, except as said rules, procedures and substantive laws are applied otherwise as follows:

(i) Unless the parties mutually set another date, within ten (10) days following Termination of Negotiation, Claimant and Respondent will jointly select one arbitrator, whose decision will be absolutely binding on all Parties; provided, however, if

Claimant and Respondent are unable to jointly select one arbitrator within said ten (10) day period, or on or before any later day set by them by which to select an arbitrator, the arbitrator will be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration will be conducted in Hoke County, North Carolina before a neutral person who is a member of the Bar of the State of North Carolina, who has been actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments, and who has no conflict of interest with any Party. The arbitrator may award any remedy or relief that a court of the State of North Carolina could order or grant, including, without limitation, specific performance of any obligation created under the Association Documents, or the issuance of an injunction, as well as the imposition of sanctions for abuse or frustration of the arbitration process; provided, however, the arbitrator will have no authority to award punitive damages or any other damages not measured by actual damages of the "Prevailing Party," as said term is hereinafter defined, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Association Documents.

(ii) In the event Claimant does not submit the Claim to binding arbitration as aforesaid, the Claim is deemed abandoned, and Respondent is released and discharged from any and all liability to Claimant arising out of the Claim; provided, nothing herein will release or discharge Respondent from any liability to a Person not a Party to the foregoing proceedings, or the mandatory requirements of this Paragraph with respect to any subsequently arising new dispute or claim by the Claimant which is identical or similar to the Claim previously deemed abandoned under this Paragraph.

This Paragraph is an agreement of the Bound Parties to arbitrate all Claims against Respondent, except Exempt Claims, and is specifically enforceable under North Carolina law. The arbitration award (the "Award") is final and binding on the Parties, and judgment upon the Award rendered by the arbitrator may be entered upon it in any court of competent jurisdiction.

2. **Allocation of Costs of Resolving Claims.**

2.1 **Costs of Notice and Negotiations.** Each Party will bear all of its own costs incurred prior to and during the proceedings described in Paragraphs 1.1 and 1.2, including the fees of its attorney or other representative. Claimant and Respondent will share equally the costs and expenses of any attorney appointed by the Board pursuant to Paragraph 2.2, whose compensation will be at a rate equal to his or her then current regular hourly billing rate, unless the Board is able to arrange with the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses.

2.2 **Arbitration Costs.** In the event the Claim proceeds to arbitration pursuant to Paragraph 1.3, the "Prevailing Party." As hereinafter defined, will receive from the non- Prevailing Party, all of its costs and expenses, including reasonable expert and attorney's fees, incurred from commencement of selection of the arbitrator under Paragraph 1.3 to the issuance of the Award. Furthermore, the non-Prevailing Party will pay all costs and expenses of the arbitration, including the costs and expenses of any attorney appointed by American Arbitration Association pursuant to Paragraph 1.3, whose compensation will be at a rate equal to his or her

then current regular hourly billing rate, unless the American Arbitration Association is able to arrange with the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses. The "Prevailing Party" will be determined as follows:

(a) Not less than five (5) days prior to the first day of the proceeding, a Party or Parties may file and serve on the other Party(ies) an offer of settlement, and within three (3) days thereafter the Party(ies) served may respond by filing and serving such Party(ies) its own offer of amount which the Party(ies) serving the settlement offer is/are willing to agree constitutes a settlement of all claims in dispute, including the Claim and all counterclaims.

(b) An offer of settlement is considered rejected by the recipient unless an acceptance, in writing, is served on the Party(ies) making the offer prior to the first day of the proceeding.

(c) If an offer of settlement is rejected, it may not be referred to for any purpose in the proceeding, but may be considered solely for the purpose of awarding fees, costs and expenses of the proceeding under Paragraph 2.2, and as provided in this Paragraph.

(d) If the Claimant makes no written offer of settlement, the amount of the Claim made or asserted by the Claimant during the action is deemed to be such Claimant's final offer of settlement hereunder.

(e) If the Respondent makes no written offer of settlement, the final offer of settlement by the Respondent will be the amount asserted during the action to be due in satisfaction of the Claimant's Claim, otherwise the Respondent's offer of settlement hereunder is deemed to be zero.

(f) If the Respondent asserts a counter claim, then offers of settlement shall take into consideration such counterclaim in the manner provided. Furthermore, any Award shall also take into account such counterclaim.

(g) The Party(ies) whose offer, made or deemed made, is closer to the Award granted in the proceeding is considered the "Prevailing Party" hereunder. If the difference between Claimant's and Respondent's offers and the Award is equal, neither Claimant nor Respondent is considered to be the Prevailing Party for purposes of determining the award of fees, costs and expenses of arbitration.

3. **Enforcement of Resolution.** If the Parties agree to resolve any Claim through negotiation in accordance with Paragraph 1.2 and any Party thereafter fails to abide by the terms of the agreement reached through negotiation, or if, following arbitration, any Party thereafter fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce the agreement or Award without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to enforce the agreement or Award is entitled to recovery from the non-complying Party (or if more than one

noncomplying Party, from all the Parties jointly and severally) all costs incurred in enforcing the agreement or Award, including, without limitation, attorney's fees and court costs.