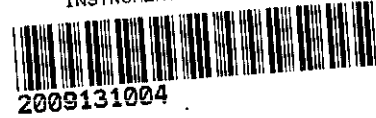


Upon recording, please return to:

Attn.: Legal Department  
John Wieland Homes and Neighborhoods  
4125 Atlanta Road  
Smyrna, GA 30080

FOR REGISTRATION J. DAVID GRANBERRY  
REGISTER OF DEEDS  
MECKLENBURG COUNTY, NC  
2009 SEP 16 01:21:48 PM  
BK:25085 PG:57-132 FEE:\$236.00

INSTRUMENT # 2009131004



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Filed for Record in  
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**DECLARATION OF PROTECTIVE COVENANTS AND EASEMENTS**

**FOR**

**McCULLOUGH**

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

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## **TABLE OF EXHIBITS**

<b><u>Exhibit</u></b>	<b><u>Name</u></b>
"A"	Definitions
"B"	Property Submitted
"C"	Additional Property which can be Unilaterally Submitted by Declarant
"D"	Bylaws of McCullough Neighborhood Association, Inc.

# **DECLARATION OF PROTECTIVE COVENANTS AND EASEMENTS**

**FOR**

**McCULLOUGH**

THIS DECLARATION is made on the date hereinafter set forth by John Wieland Homes and Neighborhoods of the Carolinas, Inc., a Georgia corporation (hereinafter sometimes called "Declarant").

## **Background Statement**

Declarant is the owner, or if not the owner has the written consent of the owner, of the real property described in Article II, Section 1 of this Declaration.

Declarant desires to subject the real property described in Article II, Section 1 hereof to the provisions of this Declaration to create a residential community of single-family and townhome housing and to provide for the subjecting of other real property to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the real property described in Article II, Section 1 of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, shall be binding on all persons having any right, title or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall inure to the benefit of each and every owner of all or any portion thereof.

## **Article I** **Definitions**

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in Exhibit "A" attached hereto and by reference made a part hereof.

## **Article II** **Property Subject to this Declaration**

**Section 1. Property Hereby Subjected to this Declaration.** The real property described in Exhibit "B" attached hereto and by reference made a part hereof is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and

mortgaged or otherwise encumbered subject to this Declaration.

**Section 2. Other Property.** Only the real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

### **Article III** **Association Membership and Voting Rights**

**Section 1. Membership.** Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast for each Lot owned.

**Section 2. Voting.** Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one Person seeks to exercise it.

### **Article IV** **Assessments**

**Section 1. Purpose of Assessments.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, welfare, common benefit and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

**Section 2. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration; and (d) Neighborhood Assessments as provided herein. All such assessments, together with late charges, interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum,



costs and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges (not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any installment unpaid interest at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%), costs and reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her successor-in-title shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of an Owner's successor-in-title for the unpaid assessments of the Owner shall not apply to any first Mortgagee taking title through foreclosure proceedings.

The Association shall, within ten (10) business days after receiving a written request therefor 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. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Assessments shall be paid at a uniform rate per Lot in such manner and on such dates as may be fixed by the Board of Directors. Unless otherwise provided by the Board, assessments shall be paid in annual installments. The Board may charge each Owner a service, collection, consulting or administration fee (an "Administration Fee") in an amount to be determined by the Board in connection with the assessment and collection of the assessments provided for in this Declaration.

The monthly costs of operating the Association may fluctuate dramatically during each budget year. Therefore, the Board is not required to prorate the assessment obligation of any Owner who has not lived in the Community for a full year. For example, if the bulk of the costs of operating the Association are likely to be incurred in the summer months, any Owner moving into the Community after the beginning of the budget year but prior to the summer months may be required to pay full assessments.

**Section 3. Computation of Budget and Annual Assessment.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the annual assessment to be levied against each Lot for the year (or portion thereof in the case of the initial budget) to be delivered to each member at least thirty (30) days prior to the due date and a notice of the meeting to consider ratification of the budget (which notice shall include a statement that the budget may be ratified without a quorum being present). The date of the meeting of the members to consider ratification of the budget shall be not less than ten (10) days nor more than sixty (60) days after mailing of the budget and notice. There shall be no requirement that a quorum be present at the meeting for ratification of the budget. The budget is ratified and the assessment

shall become effective unless disapproved at a meeting by at least seventy-five (75%) percent of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, the budget last ratified shall be continued until a new budget is ratified. Any surplus funds of the Association remaining after payment of or provision for the operating expenses of the Association, the funding of a reasonable operating expense surplus, and any prepayment of reserves may or may not be refunded or credited to the Owners in the discretion of the Board, but may be Association funds for use in covering operating and other expenses (including reserves) incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

Annual assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. Annual assessments may include sums for property taxes on the Common Property, insurance premiums, legal and accounting fees, management fees, charges for utilities provided by the Association, if any, landscape maintenance and expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors in connection with the enforcement rights and duties of the Association against Owners and others.

**Section 4. Special Assessments.** In addition to the other assessments authorized herein, the Association may levy special assessments. So long as the total amount of special assessments allocable to each Lot does not exceed Three Hundred Dollars (\$300.00) in any one fiscal year, the Board may impose the special assessment without a vote of the members. Except as provided in Article VII, Section 2 hereof, any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a Majority of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

**Section 5. Neighborhood Assessments.** The Association may levy assessments against the property in a particular Neighborhood to fund actual and estimated expenses incurred by the Association for the primary benefit of property within such Neighborhood, including without limitation, maintenance required to be performed by the Association with respect to property within such Neighborhood. Neighborhood assessments shall be levied as specifically budgeted from time to time by the Board of Directors pursuant to this Declaration. In addition, the Board shall levy a Neighborhood assessment upon the request of the Owners holding two-thirds (2/3) of the Total Association Vote applicable to Lots within a Neighborhood.

**Section 6. Lien for Assessments.** All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association, and the Association shall be entitled to file a claim of lien in the land records of the county(ies) in

which the Lot is located. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (b) liens for real estate taxes and other governmental assessments and charges against the Lot..

**Section 7. Effect of Nonpayment of Assessments: Remedies of the Association.**

Any sums (including assessments or installments thereof) assessed against any Lot pursuant to this Declaration which are not paid when due shall be delinquent. Any such sums delinquent for a period of more than ten (10) days shall incur a late charge in such amount as the Board may from time to time determine (not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any installment unpaid). The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date (the "Delinquency Notice"). The Delinquency Notice shall state (i) the outstanding balance due as of the date of the Delinquency Notice; (ii) that the member has fifteen (15) days from the mailing of the Delinquency Notices (the "Grace Period") to pay the outstanding balance without being required to pay attorneys' fees and court costs; (iii) the name of and contact information for a representative of the Association whom the member can contact to discuss a payment schedule for the outstanding balance; provided however, the Association shall not be required to permit payment of the outstanding balance in installments; and (iv) that if the outstanding balance is not paid within the Grace Period, the Association intends to seek payment of attorneys' fees and court costs. The Delinquency Notice must be sent by first class mail to the Lot of such member and, if different, to the mailing address of the member in the Association's records. If any such sums are not paid within thirty (30) days after the due date, the Board may accelerate and declare immediately due all such sums (including annual assessments or installments thereof) without any further notice being given to the delinquent Owner, and a claim of lien, as herein provided, may be filed in the office of the clerk of superior court or register of deeds of the count(ies) in which the Lot is located in the manner provided by law. Such lien shall include the late charge, interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, all late charges from the date first due and payable, any Administration Fee, all costs of collection, and, if the Owner has been provided with a Delinquency Notice and failed to pay the outstanding balance set forth therein within fifteen (15) days from the mailing of the Delinquency notice, court costs, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law.

If any sum assessed against any Lot pursuant to this Declaration remains unpaid after sixty (60) days from the due date, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes; provided however, (i) the Association may not foreclose the lien under Article 2A of Chapter 45 of the North Carolina General Statutes if the debt securing the lien consists solely of fines imposed by the Association, interest on unpaid fines, or attorneys fees incurred by the Association solely associated with fines imposed by the Association (such lien may be enforced by judicial foreclosure as provided in Article 29A of

Chapter 1 of the North Carolina General Statutes); and (ii) any lien securing debt consisting solely of Administration Fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents, to the extent permitted by this Declaration and applicable law, the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, or in any other manner permitted by applicable law. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same.

All payments shall be applied first to costs and attorney's fees, including, without limitation, any Administration Fee, then to late charges, then interest and then to delinquent assessments.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot or nonuse of the Common Property, including, without limitation, nonuse of the Community recreational facilities. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

If any sum assessed against any Lot pursuant to this Declaration is delinquent for sixty (60) days or more, in addition to all other rights provided in this Declaration, the Association shall have the right, upon ten (10) days written notice, and an opportunity to be heard as provided in the Bylaws, to suspend any utility services the costs of which are a common expense of the Association, including, but not limited to, water, electricity, heat, air conditioning, gas and cable television to that Lot, until such time as the delinquent amounts and all costs permitted pursuant to this paragraph are paid in full. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service, including reasonable attorney's fees, shall be an assessment against the Lot and shall be collected as provided herein for the collection of assessments. The notice requirement of this paragraph shall be deemed complied with if the notice is sent by certified mail to the Lot address and to any other address the Owner of the Lot has provided in writing to the Association.

#### **Section 8. Date of Commencement of Assessments/Allocation of Assessments.**

(a) The assessments provided for herein shall commence as to all Lots subject to assessment hereunder as of the first day of the calendar year in which the first Lot is conveyed by the Declarant to a Person other than Declarant. All assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. All assessments shall be rounded up to the nearest dollar and payable as such.

(b) Prior to the commencement of assessment payments, the Declarant shall pay all common expenses of the Association. After the commencement of assessment payments as to any Lot, Declarant and its affiliates, shall be allocated the full amount of the assessments provided herein for each Lot owned by Declarant or its affiliates and occupied for residential purposes; provided, however, each Lot owned by Declarant or its affiliates which is not occupied for residential purposes, shall not be allocated any assessment provided for herein.

(c) Any Lot which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be allocated any assessments under this Declaration whether owned by Declarant or any other Person, so long as such Lot is approved for use as a model home and is not occupied for residential purposes.

(d) Notwithstanding anything to the contrary herein, the Declarant and its affiliates may contribute assessments due from them in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant, or its affiliate, as the case may be, and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant, or its affiliate, as the case may be, cannot agree as to the value of any contribution, the Declarant, or its affiliate, as the case may be, shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors, approved by the Declarant, or its affiliate, as the case may be, who are in the business of providing such services and materials. If the Association and the Declarant, or its affiliate, as the case may be, are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

**Section 9. Specific Assessments.** The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XIII, Section 1 of this Declaration and the costs of maintenance performed by the Association which the Owner is responsible for under Article V, Section 2 of this Declaration shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses:

(a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received.

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

(c) Expenses of the Association occasioned by the conduct of one or more, but less than all of the Lot Owners or the Occupants, family members, licensees or invitees of such Lot.

This Section specifically contemplates, without limitation, that the Association may incur expenses (including, without limitation, expenses for extraordinary items, matters and occurrences and expenses not anticipated and/or not budgeted for in advance) for certain maintenance, insurance and repair (in accordance with this Declaration) related to single-family attached or detached townhouse and/or condominium residences within the Community, if any, which expenses benefit the Lots containing such type of housing only. Such expenses shall be included in the budget prepared as described in Article IV, Section 3, and the Lots primarily benefited by such expenses shall be subject to specific assessment imposed by the Board pursuant to this Section to cover such expenses.

**Section 10. Budget Deficits during Declarant Control.** For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of the Declarant, or (b) cause the Association to borrow such amount from a commercial lending institution at the then-prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

**Section 11. Capitalization of Association.**

Upon acquisition of record title to every Lot by a first Owner thereof other than Declarant or its affiliates, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount up to 100% of the then current annual assessment per Lot for that year, with the exact amount to be determined from time to time by Board resolution. This contribution shall constitute a specific assessment against the Lot, and shall be in addition to, not in lieu of, any other assessments levied on the Lot and shall not in any way be construed as part of or identical to any such assessments or as an advance payment of any such assessments. This contribution shall be collected at the closing of the Lot and disbursed to

the Association for use in covering operating and other expenses (including reserves) incurred by the Association pursuant to the terms of this Declaration and the Bylaws; or if not collected at closing shall be paid immediately upon demand by the Association. This contribution shall not apply to the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure, but shall apply to the Owner acquiring the Lot from the foreclosing Mortgagee.

## **Article V** **Maintenance**

**Section 1. Association's Responsibility.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping, paving, and other improvements situated on the Common Property. The Association shall also maintain the following: (i) all entry features for the Community, including entry area landscaping and any irrigation system and the expenses for water and electricity, if any, provided to all such entry features regardless of whether such entry features are on a Lot, privately owned property or public right-of-way; (ii) Community recreational facilities and recreational amenities serving the Community, including the gazebo and walking trails within the Community, if any; (iii) any lake, dam and appurtenant structures located within the Community; (iv) any private Community streets and alleys, including street signs, if any, originally installed by Declarant or its affiliates; (v) all street medians and islands in the Community, including, without limitation any landscaping and the expenses for water and electricity, if any, provided to such street medians and islands, to the extent the same are not maintained by a local or governmental entity or third party or a Neighborhood Association pursuant to a Neighborhood Declaration; (vi) all drainage detention and retention areas which were originally maintained by Declarant or its affiliates, to the extent such areas are not maintained on an ongoing basis by a governmental entity regardless of whether said drainage detention or retention facilities are located on a Lot or Common Property; provided, however, each Lot Owner shall be responsible for maintaining all storm water drainage facilities and related pipes which exclusively serve said Lot, unless otherwise maintained pursuant to this Article and Article VI or a Neighborhood Association pursuant to a Neighborhood Declaration; and, (vii) all water and sewer pipes or facilities which serve more than one (1) Lot, whether located within or without the Lot's boundaries, to the extent that such pipes and facilities are not maintained by public, private or municipal utility companies or a Neighborhood Association pursuant to a Neighborhood Declaration; and, (viii) all Community greenspace and open space; and (ix) any retention wall or perimeter fencing installed by the Declarant. The maintenance responsibility for any lake located within the Community shall include, without limitation, inspecting and maintaining the dam and performing any dredging or other necessary maintenance. The Association shall also maintain all property outside of Lots located within the Community which was originally maintained by Declarant or its affiliates. The Association may, but shall not be required to, maintain all or portions of lawns within the Community as provide in Article V, Section 5 below.

The Association may, but shall not be obligated to, maintain, repair, or replace, as necessary, all mailboxes or mailbox posts located within the Community. In addition, the

Association shall have the right, but not the obligation, to maintain property not owned by the Association, and/or to provide services, where the Board has determined that such maintenance would benefit all Owners.

There is hereby granted to the Association a blanket easement upon, across, over, and under all property within the Community for access, ingress, and egress as necessary to permit the Association to perform such maintenance. The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

The Association shall not be liable for injury or damage to person or property caused by or resulting from the elements, the Owner of any Lot, any other Person, any utility, rain, snow or ice which may leak or flow from any portion of the Common Property, or any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to any Owner, or any Owner's Occupants, guests or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupants, guests or family, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities hereunder, where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such Persons of its choice such duties as are approved by the Board.

**Section 2. Owner's Responsibility.** Except as provided in Section 1 above or performed by a Neighborhood Association pursuant to a Neighborhood Declaration, all maintenance of the Lot and all structures, parking areas, landscaping and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. If the Board of Directors determines that (a) any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, or (b) the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of any Owner or Occupant or their family, guests, lessees or invitees, and is not covered or paid for by insurance, in whole or in part, then the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. Except in an emergency situation, the Owner shall have ten (10) days from the date of the notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within such time period, to commence such work within such ten (10) day period and diligently pursue completion within a reasonable time. If any Owner does not comply with the provisions hereof or in an emergency situation, the



Association may provide any such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Lot, and shall be collected as provided herein for the collection of assessments.

### **Section 3. Party Walls and Party Fences.**

(a) General Rules of Law to Apply. Each wall or fence built as a part of the original construction of the Lots which shall serve and separate any two (2) adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

(c) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall or fence may restore it, and if the other Owner or Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one additional arbitrator and the decision by a Majority of all three arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

**Section 4. Common Fencing.** Declarant may, but has no obligation to, install privacy fencing between, on or among one or more Lots. The privacy fencing, if installed may not be located on the common Lot boundary lines and the failure of the common fencing to be located on the boundary shall not change or impact the location of the boundary regardless of any period of existence. The boundary lines of Lots shall be and shall remain as shown on the recorded subdivision plats for the Community. Any owner may use the property located on the dwelling side of such privacy fence, whether or not located on the Owner's Lot, for any purpose allowed

on other adjacent portions of the Owner's Lot, except that no permanent improvements may be constructed thereon. If Declarant installs common privacy fencing on portions of the Community, Declarant shall have no obligation to install such fencing in all similarly situated areas and may decline to do so at its sole discretion. As provided in Section 1, above, all common privacy fencing originally installed by Declarant shall thereafter be maintained, repaired and replaced by the Association and the costs thereof shall be assessed against all Owners, whether or not such Owner's Lot is benefited by a common privacy fence. Owners shall not remove, alter, paint or modify the common privacy fencing in any way without obtaining prior written consent pursuant Article VI, Section 9 hereof.

**Section 5. Lawn Maintenance by the Association.** The Association may maintain some or all of the lawns and/or landscaping improvements located on some or all Lots as determined from time to time by the Board of Directors. The Board of Directors in its sole discretion may leave portions of the Community as undisturbed natural areas, may provide lawn maintenance for some Lots but not others and may change the landscaping in the Community at any time and from time to time or may, with the consent of the Declarant, change the level of lawn maintenance performed such as maintaining front yards only or discontinuing lawn maintenance entirely. The Board of Directors may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association and the rights of Owners with respect to adding or modifying landscaping improvements. Landscaping improvements installed by the Owner in accordance with the provisions of this Declaration shall be maintained by the Owner in a manner consistent with the Community-Wide Standard. Any landscaping improvements originally installed by an Owner which are not properly maintained, including, but not limited to, damaged, diseased or dead plants, shrubs and trees may, at the sole discretion of the Board of Directors, be removed from the Community. The costs associated with removing any damaged, diseased or dead plants, shrubs and trees originally installed by an Owner in the Community, may be assessed against the Owner and the Lot as a specific assessment. In the event that a fence is erected or installed on a Lot by Declarant or an Owner, the Association shall no longer be obligated to maintain and/or perform landscaping within such enclosed area and such landscaping shall be the sole responsibility of the Owner thereof; provided, however, nothing herein shall excuse or otherwise reduce the obligation of an Owner to pay the full amount of assessments allocated against such Owner's Lot.

## **Article VI**

### **Use Restrictions and Rules**

**Section 1. General.** This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may be amended only in the manner provided in Article XIII, Section 4 hereof regarding amendment of this Declaration. The Board of Directors may, from time to time, without consent of the members, promulgate, modify or delete other use restrictions and rules and regulations applicable to the Lots and the Common Property. This authority shall include, but shall not be limited to, the right to limit the type and size and to set the maximum and minimum speeds of vehicles within the Community. The Board shall also have the authority to impose all other necessary

traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community. Such rules, regulations and use restrictions shall be distributed or otherwise made available (in a manner deemed reasonable by the Board) to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified in a regular or special meeting by a Majority of the Total Association Vote.

**Section 2. Use of Lots.** All Lots shall be used for single-family residential purposes exclusively, and no trade, business or business activity of any kind shall be carried on or conducted in, from or upon any Lot or any part of the Community at any time without the prior written approval of the Board, except that the Owner or Occupant residing on a Lot may conduct such ancillary business activities within the residence on the Lot so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the residence; (b) the business activity does not involve regular, frequent or conspicuous visitation of the Lot by employees, clients, customers, suppliers or other business invitees for business purposes; (c) the business activity conforms to all zoning requirements for the Community; (d) the business activity does not increase traffic in the Community (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage; (f) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board; (g) the business activity does not result in a materially greater use of common facilities or Association services; and (h) the business activity does not otherwise violate the Declaration, Bylaws or rules and regulations of the Association.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full- or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. This Section shall not apply to activities of the Association. Leasing of a Lot shall not be considered a trade, business or business activity.

**Section 3. Signs.** No sign of any kind, whether temporary or permanent, shall be erected or displayed within the Community without the prior written consent of the Board except: (a) one (1) professional security sign consistent with the Community-Wide Standard not to exceed four inches (4") by four inches (4") in size displayed from within a Lot; (b) such signs as may be required by legal proceedings; (c) signs erected by Declarant and its affiliates; (d) in connection with a bona-fide offer to sell or lease a Lot, one (1) professionally lettered "For Sale" or "For Rent" sign consistent with the Community-Wide Standard displayed on the Lot, but only if (i) the sign has a maximum area of four (4) square feet and a maximum height of four (4) feet above

ground level, and (ii) the content of the sign and anything else attached to, associated with or in the vicinity of the sign states or conveys only that the Lot is for sale or for rent and the name and telephone number of the person to contact for additional information; and (e) in connection with a political campaign, candidate yard signs consistent with the Community-Wide Standard displayed from a Lot, but only if (i) the sign has a maximum area of four (4) square feet and a maximum height of four (4) feet above ground level or such greater height as may be authorized by law, and (ii) the sign is displayed no sooner than forty-five (45) days prior to the election and is removed within seven (7) days after the election. The Board shall have the right to erect any reasonable and appropriate signs. The Board may impose a fine against any Owner or Occupant of up to One Hundred Dollars (\$100.00) per day for violations of this Section, in addition to any other remedies of the Association. Any fine imposed pursuant to this Section shall be deemed an assessment against the Lot and may be collected in the same manner as provided herein for collection of assessments.

**Section 4. Vehicles/Parking.** The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans, automobiles and limousines. Vehicles shall not be parked on the Common Property (except passenger non-commercial automobiles parked in designated parking areas while the users thereof are using the Common Property) or on any other portion of the Community other than the driveway and the garage serving a Lot. Unless and except to the extent that the Occupants of a Lot shall have more vehicles than the number of garage parking spaces serving their Lot, all vehicles shall be parked within such garage parking spaces. Vehicles may be parked in the driveway and additional parking spot, if any serving a Lot only after all of the garage parking spaces serving such Lot have vehicles parked in them. All parking shall be subject to such further rules and regulations as the Board may adopt.

Disabled vehicles, stored vehicles, boats, trailers, campers, buses, vans (except mini-vans or utility vehicles used as non-commercial passenger vehicles), trucks (except pick-up trucks and sport utility vehicles), recreational vehicles (for example, without limitation, RV's and motor homes), vehicles used primarily for commercial purposes and vehicles with commercial writing on their exteriors are prohibited from being parked in the Community, except in garages. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writing on their exteriors shall be allowed temporarily in the Community during normal business hours for the purpose of serving any Lot or the Common Property; provided, however, without the prior written consent of the Board, no such vehicle shall be authorized to remain in the Community overnight or for any purpose except for serving a Lot or the Common Property. For purposes of this paragraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is inoperable. A vehicle shall be considered "stored" if it remains on the Community for three (3) consecutive days or longer without the prior written permission of the Board (the temporary removal of the vehicle shall not be sufficient to establish compliance with this restriction).

If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle

specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity which will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Lot, is obstructing the flow of traffic, is parked in any unpaved area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this Section, neither the Association nor any director, officer or agent of the Association shall be liable to any person for any claim of damage or otherwise as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

**Section 5. Occupants Bound.** All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of any Lot even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

**Section 6. Animals and Pets.** No animals, livestock or poultry of any kind may be raised, bred, kept or permitted in the Community, except that dogs, cats or other usual and common household pets in reasonable number, as determined by the Board, may be kept on a Lot; provided, however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise or endanger the health of or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs shall at all times whenever they are outside a Lot be confined on a leash. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. The Board shall have the right to adopt additional rules and regulations regarding animals and pets in the Community designed to minimize damage and disturbance to other Owners and Occupants, including, without limitation, rules regarding damage deposits, waste removal, leash controls and noise controls.

**Section 7. Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or

offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property adjacent to the Lot. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment, or device, mechanical or otherwise which creates or produces excessively loud sounds or any vibrations, or any conduct which creates any noxious or offensive odors outside a home shall be located, used, placed, installed or maintained upon any the exterior of any Lot, or any portion thereof, unless required by law. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board. This provision shall not apply to any Lot(s) owned by the Declarant.

**Section 8. Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions shall not be pursued or undertaken in any part of the Community.

**Section 9. Architectural Standards.** No exterior construction, alteration, addition or erection of any nature whatsoever (including, without limitation, fences, pools, tennis courts, exterior lighting, landscaping, trees, treehouses and play equipment) shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant or its affiliates, or as is approved in accordance with this Section, or is approved in accordance with any Neighborhood Declaration, or as is otherwise expressly permitted herein. No such exterior construction, addition, erection or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials and location shall have been submitted in writing to, actually received by, and approved by the Board or its designee. The Board or its designee may promulgate written guidelines for the exercise of this review.

Notwithstanding any provision of this Declaration to the contrary, Declarant shall not be required to obtain approval under any provision of this Declaration from the Board for any construction, development, or sales activities of the Declarant in the Community.

The Board or its designee shall be the sole arbiter of such plans and specifications and may withhold approval on any reasonable basis, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its designee or the representatives thereof shall have the right, during reasonable hours, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. If the Board or its designee fails to approve or

to disapprove plans and specifications within sixty (60) days after such plans and specifications have been actually received by it, such plans and specifications will be deemed approved. However, all activities pursuant to plans which have been deemed approved shall be consistent with such plans and shall be consistent and in accordance with, and may not violate, this Declaration and any design guidelines.

As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any change, modification, addition or alteration. In the discretion of the Board or its designee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest.

PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS, THE BOARD, ITS MEMBERS, ITS DESIGNEE AND THE ASSOCIATION DO NOT ASSUME LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. DECLARANT, ITS PARTNERS AND AFFILIATES, THE ASSOCIATION, THE BOARD, ITS DESIGNEE, AND THE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS OF ANY OF THEM, SHALL NOT BE LIABLE IN DAMAGES OR OTHERWISE TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS, BY REASON OF ANY MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR THE FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS AND SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS AND EVERY OWNER AGREE THAT SUCH PERSONS AND OWNERS WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, ITS PARTNERS AND AFFILIATES, THE ASSOCIATION, THE BOARD, ITS DESIGNEE, OR THE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS OF ANY OF THEM, TO RECOVER ANY DAMAGES OR FOR ANY OTHER PURPOSE, AND SUCH PERSONS AND OWNERS HEREBY RELEASE, REMISE, QUITCLAIM AND COVENANT NOT TO SUE FOR ALL CLAIMS, DEMANDS AND CAUSES OF ACTION, ARISING OUT OF OR IN CONNECTION WITH ANY MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR THE FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS AND SPECIFICATIONS. ALL SUCH PERSONS AND OWNERS HEREBY WAIVE THE PROVISIONS OF ANY LAW WHICH PROVIDE THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

Any structure or improvement placed or made in violation of this Section shall be deemed

to be nonconforming. Upon written request from the Board, an Owner shall, at its own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. In such event, neither the Board, the Association nor the officers, directors, members, employees and agents of any of them shall be held liable to any Person for exercising the rights granted by this paragraph, including, without limitation, claims for damages resulting from the removal of the nonconforming structure or improvement. In addition to any other remedies available to the Board, in the event of noncompliance with this Article, the Board may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Board shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Section, including, without limitation, the right to levy and collect fines.

**Section 10. Antennas and Satellite Dishes.** No transmission antennas or satellite dishes of any kind, and no direct broadcast satellite ("DBS") antennas or multi-channel multi-point distribution service ("MMDS") antennas larger than one (1) meter in diameter, shall be placed, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or its designee. DBS and MMDS antennas and satellite dishes one (1) meter or less in diameter, antennas designed to receive or transmit fixed wireless signals and television broadcast service antennas (each a "Permitted Antenna") may be installed only if reasonably screened and located as approved by the Board or its designee and installed in accordance with the rules and regulations of the Federal Communications Commission and of the Association, both as may be amended from time to time; provided however neither the Board or the Association may restrict the location of a Permitted Antenna if such restriction (i) imposes unreasonable delay or prevents the use of the antennae; (ii) unreasonably increases the cost of installation; or (iii) an acceptable quality signal cannot otherwise be obtained. However, the Board and Declarant (and its affiliates) reserve the right to (but shall not be obligated to) erect any type and size of master antenna, satellite dish or other similar master system for the benefit of the Community. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an individual outdoor antenna or similar device would be the most cost-effective way to receive the signals sought to be received.

**Section 11. Gardens, Basketball Goals, Etc.** Grass, ornamental plants and shrubbery (and only the foregoing) may be planted in the front or side yard of any Lot. All other planting may be done only with prior written approval of the Board or its designee or in accordance with the guidelines previously established by the Board or its designee. Overseeding of fescue lawns and sodding of lawns with Bermuda or zoysia grasses shall not require prior approval pursuant to this Section. No vegetable garden, hammocks, statuary or recreational equipment may be placed, erected, allowed or maintained within the Community without the prior written consent of the



Board or its designee. This provision shall not, however, apply to basketball goals which may be installed after the type and location have been previously approved in writing by the Board or its designee.

**Section 12. Tree Removal.** No trees shall be removed without the express prior consent of the Board or its designee, except for (a) trees removed by the Declarant or its affiliates; (b) diseased or dead trees; and (c) trees needing to be removed to promote the growth of other trees. The Board in its sole discretion may require that a removed tree be replaced with a similar tree.

**Section 13. Lighting.** Notwithstanding Article VI, Section 9 above, the following exterior lighting may be installed without the necessity of obtaining the prior approval of the Board or its designee: (a) seasonal decorative lights during various holiday seasons (said holiday seasons shall be determined by the Board); (b) illumination of model homes and entrance features constructed by the Declarant or its affiliates; and (c) other lighting originally installed by the Declarant or its affiliates. Plans for all other exterior lighting must be submitted and approved in accordance with Article VI, Section 9 hereof. Decorative post lights will not be approved unless they conform with established street lighting.

**Section 14. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant of any Lot may obstruct or rechannel the drainage flows after the location and installation of drainage swales, storm sewers or storm drains. Declarant, for itself and its affiliates, reserves the right to prepare sloping banks, cut or fill, on a three (3) to one (1) slope on all streets and roads. Declarant, for itself and its affiliates, hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 15. Sight Distance at Intersections.** All property located at street intersections shall be so landscaped as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain at any corner where this would create a traffic or sight problem.

**Section 16. Clotheslines, Garbage Cans, Woodpiles, Etc.** No exterior clotheslines, woodpiles and other similar items of any type shall be permitted in the Community without the prior written consent of the Board or its designee. Garbage cans and other similar items shall be located or screened so as to be concealed from view of neighboring Lots, streets and property located adjacent to the Lot. All rubbish, trash and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow, in Declarant's sole discretion, developers and builders within the Community to do so. The Association may, but shall not be

required to, contract with a private trash collection company to pick up all usual and customary household trash on a regular basis. The Board of Directors shall determine the type of trash and recycling receptacles for the Community. If individual trash and recycling receptacles are used, such receptacles shall be placed at the curb no earlier than 5:00 p.m. the day before pick up and shall be removed within twenty-four (24) hours. Trash and recycling pick up shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt.

**Section 17. Subdivision of Lot.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Lot(s) or other property in the Community. Any such division, boundary line change or replatting shall not be in violation of the applicable subdivision and zoning regulations.

**Section 18. Guns.** The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns and small firearms of all types.

**Section 19. Solar and Wind Devices.** Except for devices placed, allowed or maintained by Declarant or its affiliates, no artificial or man-made device which is designed or used for collection of or heating by solar and/or wind energy or other similar purposes shall be placed, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or its designee.

**Section 20. Fences.** Unless installed by Declarant or its affiliates, no fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or its designee. The Board or its designee may issue guidelines detailing acceptable fence styles or other specifications, but in no event may a chain link fence or a free-standing hog wire fence be approved.

**Section 21. Exterior Colors.** The exterior of all improvements, including, without limitation, residences, constructed, erected, allowed or maintained upon any Lot must be painted or repainted in a color as approved by the Board or its designee.

**Section 22. Mailboxes.** No mailboxes and appurtenant posts and/or structures shall be erected without the prior written approval of the Board or its designee. Generally, the foregoing must be of the same type and color as that originally installed by the Declarant or its affiliates.

**Section 23. Detached and Converted Structures.** No detached structures shall be placed, erected, allowed or maintained upon any Lot or within the Community unless installed by Declarant or its affiliates, without the prior written consent of the Board or its designee. All detached structures must be consistent in design materials and color with the dwelling on the Lot. In no event shall any trailers, campers, vehicles, shacks, tents, any garages (attached and detached), barns or other structures be used as a residence or living space in any manner whatsoever, either temporarily or permanently, within the Community. Specifically, no garage,

including, but not limited to, attached and detached garages, shall be utilized in any manner whatsoever as an additional living space or residence.

However, this Section shall not be construed to prevent Declarant and those engaged in development, construction, marketing, property management or sales from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be constructed to prevent Declarant from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

**Section 24. Entry Features and Street Signs.** Owners shall not alter, remove or add improvements to any entry features or street signs constructed within the Community, or any part of any easement area associated therewith, without the prior written consent of the Board or its designee.

**Section 25. Swimming Pools.** No swimming pools shall be permitted in the Community without the prior written consent of the Board and in no event shall above ground swimming pools be permitted in the Community.

**Section 26. Window Air Conditioning Units.** No window air conditioning units shall be installed on any Lot in the Community.

**Section 27. Window Coverings.** No foil or other reflective material shall be used on any windows for sun screens, blinds, shades or any other purpose.

**Section 28. Garage Sales.** No garage sale, yard sale, flea market or similar activity shall be conducted in the Community without the prior written consent of the Board. Any such activities that have been permitted by the Board shall be subject to all reasonable conditions imposed by the Board.

**Section 29. Sidewalks.** Other than sidewalks and walkways constructed in the Community by the Declarant, all sidewalks and walkways are subject to approval or disapproval under Article VI, Section 9 above.

**Section 30. Lake/Stream Buffer.** Land-disturbing activities shall not be conducted closer to the banks of any lake or stream within the Community than is permitted by federal, state or local law or ordinances, as measured from the point where vegetation has been wrested by normal stream flow or as measured otherwise as may be required pursuant to applicable law or ordinance, except with prior written approval under Article VI, Section 9 of this Declaration and compliance with North Carolina law and all other applicable laws or ordinances.

**Section 31. Buffer Areas.** Except with prior written approval of the Board, all areas shown on any recorded subdivision plat as buffer areas or similarly named areas, shall be left in their undisturbed, natural state and no improvements may be constructed, erected, placed or allowed to remain thereon except utility lines and easements and pedestrian and vehicular access

ways (including streets and roads); provided, however, Declarant and the Association and the Owner of any Lot adjacent to such areas (with prior approval in accordance with Article VI, Section 9 hereof) may mow, plant trees, flowers and shrubs in such areas, subject to further provisions of this paragraph. For all areas within such areas, all Owners, the Declarant and the Association shall also abide by all local, state and federal regulations concerning such buffer areas.

**Section 32. Walking Trails.** Except as herein provided, the walking trails within the Community shall be used as foot paths only. Bicycles, roller blades, skate boards, go-carts, minibikes, scooters or motorcycles, with or without electric motors, or similar wheeled means of transportation or recreation shall not be permitted on the paths in the Community. Provided, however, this provision shall not prohibit the use of a path by any person with a disability by the use of a wheelchair or other necessary transportation device, and further provided that the Board of Directors may adopt such rules as may be deemed appropriate concerning the use of the paths. This provision shall not apply to concrete sidewalks located along the public streets within the Community. The Association shall maintain any walking trails which are not maintained by a government entity or volunteers affiliated with a governmental entity.

**Section 33. Storm and Flood Areas.** The Community may be encumbered by the following: floodplain/floodway areas, storm drain easements and related structures, and such other encroachments/restrictions as may be shown on recorded plat(s) of the Community. Said areas may be subject to rules and regulations of applicable federal, state and local governmental authorities.

**Section 34. Traffic Regulations.** All vehicular traffic on any private streets or alleys in the Community shall be subject to the provisions of the state and local laws concerning the operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits and including modifications of those in force on public streets, within the Community. The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of state and local laws and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. Only drivers properly licensed to operate motor vehicles on the public roads within the States of North Carolina or South Carolina may operate any type of motor vehicle within the Community. All vehicles of any kind and nature which are operated on the streets or alleys in the Community shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and Occupants.

**Section 35. Ponds, Creeks, Wetlands and Streams.** Except as herein provided, all ponds, lakes, storm water retention or detention ponds, creeks, wetlands and streams within the Community shall be used for aesthetic amenities and storm water drainage only, no other use thereof, including, without limitation, swimming, ice skating, playing, or use of personal

flotation devices, and other recreation, shall be permitted, without the written consent of the Board of Directors. Fishing shall be permitted by Owners, Occupants and guests accompanied by an Owner or Occupant so long as: (i) a license is obtained from the appropriate governmental authority, and (ii) prior written approval is obtained from the Board of Directors. Except as may be permitted by the Board of Directors, no boats shall be permitted on a lake. The Association and/or the Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of ponds, lakes, storm water retention or detention ponds, creeks, wetlands or streams within the Community. For this purpose "wetlands" means any area labeled as wetlands on a recorded plat for the Community or otherwise designated as wetlands by the Declarant or the Board of Directors. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any ponds, lakes, storm water retention or detention ponds, creeks, wetlands or streams within the Community, or any other Common Property. Applicable governmental agencies, the Declarant and the Association, shall have the sole right to control the water level of all other bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any ponds, lakes, storm water retention or detention ponds, creeks, wetlands and streams within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any pond, lake, storm water retention or detention pond, creek or stream within the Community and shall not be permitted to withdraw water from any pond, lake, storm water retention or detention pond, creek or stream as may exist in the Community without the prior written consent of the Board of Directors.

**Section 36. Lake Lots.** Retaining walls, docks and similar structures shall not be installed on Lake Lots without prior written approval under Article VI, Section 9 hereof. Notwithstanding anything contained in this Declaration to the contrary, no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, basketball goals or similar athletic equipment, boats, boat house or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls or any other structure or thing which, in the sole discretion of the Board of Directors, tends to detract from the appearance of the Community, and especially the lake, shall be permitted on any Lake Lot, without prior written approval under Article VI, Section 9 hereof. Lake Lot Owners shall be required to submit plans and specifications for fencing meeting the requirements specified above for approval under Article VI, Section 9 hereof.

## **Article VII**

### **Insurance and Casualty Losses**

**Section 1. Insurance on Common Property.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Article V, Section 1 hereof. This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk"

coverage in like amounts.

If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents and covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Property. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

Any insurance policy obtained by the Association shall provide the following: (a) each Lot Owner is an insured under the policy to the extent of the Lot Owner's insurable interest; (b) the insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household; (c) no act or omission by any Lot Owner, unless acting within the scope of the Owner's authority on behalf of the Association will preclude recovery under the policy; and (d), if at the time of a loss under the policy, there is other insurance in the name of the Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant or its affiliates and to reimburse the Person so providing or arranging the insurance coverage for the cost thereof, and Declarant or its affiliates shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant or its affiliate, as the case may be, and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant or its affiliate, as the case may be, in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant or its affiliates.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective parties which may be benefited by such insurance, as their interests may appear. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company authorized to do business in North

Carolina.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if these are reasonably available, and all insurance policies shall be reviewed annually by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any one or more individual Owners;

(iv) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any defect or the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be canceled, subjected to nonrenewal, or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to other insurance coverage required by this Section, the Board shall obtain

workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employees dishonesty coverage covering directors, officers, employees and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the directors' best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

**Section 2. Individual Insurance.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on the Owner's property. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times and a copy of such policies shall be furnished to the Association upon request.

**Section 3. Damage and Destruction -- Property Insured by Association.**

(a) **In General.** Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall 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, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessary to comply with applicable building codes.

(b) **Repair and Reconstruction.** Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least eighty percent (80%) of the Total Association Vote otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or



reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

**Section 4. Damage and Destruction -- Lots Not Insured by Association.** Unless otherwise provided in a Neighborhood Declaration, the damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article XIII, Section 1 of this Declaration.

**Section 5. Insurance Deductible.** The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

#### **Article VIII** **Condemnation**

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on behalf of the Association or on the written direction of all Owners of Lots subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VII, Section 2 above, applicable to damage or destruction of property insured by the Association, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

**Article IX**  
**Annexation and Withdrawal of Property**

**Section 1. Unilateral Annexation by Declarant.**

(a) As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option from time to time at any time until fifteen (15) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C" attached hereto and by reference made a part hereof to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the land records of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

(b) The rights reserved unto Declarant to subject additional land to this Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

**Section 2. Other Annexation.** Subject to the consent of the owner thereof and the consent of the Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community), upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Lots, the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the land records of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

**Section 3. Withdrawal of Property.** Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Community then owned by Declarant or its affiliates or the Association (or if not so owned, removal/withdrawal may be accomplished with the written

consent of the owner(s) of such property), from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Any such withdrawal shall be accomplished by the filing for record of an amendment to this Declaration describing the property removed and shall be effective upon filing for record in the Office of the Register of Deeds or Clerk of Court in the county(ies) and state(s) where the Community is located, unless a later effective date is provided therein. Such amendment shall be executed by the Declarant and the Owner(s) of the property being removed and shall not require the vote or consent of any other Person.

## **Article X**

### **Leasing and Sale of Lots.**

**Section 1. Leasing.** In order to preserve the character of the Community as predominantly owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, leasing of Lots shall be governed by the restrictions imposed by this Section. As used herein, "leasing" shall mean the regular, exclusive occupancy of a Lot by any Person(s) other than the Owner for which the Owner receives any direct or indirect monetary or economic benefit; the occupancy of a Lot by a roommate of an Owner then occupying a Lot shall not constitute leasing. Except as provided herein, the leasing of Lots shall be prohibited.

(a) **General.** Owners desiring to lease their Lots may do so only if they have applied for and received from the Board either a "leasing permit" or a "hardship leasing permit." Such a permit, upon its issuance, will allow an Owner to lease such Owner's Lot, provided that such leasing is in strict accordance with the terms of the permit and this Section. The Board shall have the authority to establish conditions as to the duration and use of such permits consistent with this Section. All leasing permits and hardship leasing permits shall be valid only as to a specific Owner and Lot and shall not be transferable between either Lots or Owners (including a subsequent Owner of a Lot where a permit was issued to the Owner's predecessor in title).

(b) **Leasing Permits.** An Owner's request for a leasing permit shall be approved if the number of then current, outstanding leasing permits for Lots, including the request then under consideration, would be less than 10% of the total Lots in the Community. A leasing permit shall be automatically revoked upon the happening of any of the following events: (i) the sale or transfer of the Lot to a third party (excluding sales or transfers to (a) an Owner's spouse, (b) a person cohabiting with the Owner, and (c) a corporation, partnership, company, or legal entity in which the Owner is a principal); (ii) the failure of an Owner to lease such Owner's Lot within 90 days of the leasing permit having been issued; or (iii) the failure of an Owner to have such Owner's Lot leased for any consecutive 90-day period thereafter. If the number of current leasing permits, including the request then under consideration, would be 10% or more of the Lots, no additional leasing permits shall be issued (except for hardship leasing permits) until the number of outstanding current leasing permits, including the next request under consideration, would fall below 10% of the total Lots in the Community. Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued the same if

they so desire when the number of current outstanding leasing permits, including the next one to be issued, falls to less than 10% of the total Lots in the Community. The issuance of a hardship leasing permit to an Owner shall not cause the Owner to be removed from the waiting list for a leasing permit.

(c) Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board for a hardship leasing permit. The Board shall have the authority to issue or deny requests for hardship leasing permits in its discretion after considering the following factors: (i) the nature, degree, and likely duration of the hardship, (ii) the harm, if any, which will result to the Community if the permit is approved, (iii) the number of hardship leasing permits which have been issued to other Owners, (iv) the Owner's ability to cure the hardship, and (v) whether previous hardship leasing permits have been issued to the Owner. Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional hardship leasing permits. Hardship leasing permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a leasing permit.

(d) Leasing Provisions. Leasing which is authorized, pursuant to permit, hereunder shall be governed by the following provisions:

(i) Notice. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Lot, the address and phone number of the Owner other than at the Lot and such other information as the Board may reasonably require. The Owner must provide the lessee copies of the Declaration, Bylaws, and the Association's rules and regulations

(ii) General. Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship.

(iii) Liability for Assessments, Use of Common Elements, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(a) Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and Association rules and regulations adopted pursuant thereto (collectively, "Governing Documents"), and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such

compliance. The Owner (lessor) shall cause all Occupants of such Owner's (lessor's) Lot to comply with the Governing Documents and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Governing Documents for which a fine is imposed, notice of the violation shall be given to the lessor and the lessee, and such fine may be assessed against the lessee in accordance with Article III, Section 20 of the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the lessor shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

Any violation of the Governing Documents by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the lessor to terminate the lease without liability and to evict the lessee in accordance with North Carolina law. The lessor hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Governing Documents, including, without limitation, the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the lessor, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Lot and any hardship permit or leasing permit shall automatically be revoked.

(b) Use of Common Elements. The lessor transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the lessor has to use the Common Elements, including, but not limited to, the use of any and all recreational facilities and other amenities.

(c) Liability for Assessments. When a Lot Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the lessor from any obligation, including the obligation for assessments, for which lessor would otherwise be responsible.

(e) Applicability. Notwithstanding the above, this Section shall not apply to any leasing transaction entered into by the Declarant, the Association, or the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means

pursuant to the satisfaction of the indebtedness secured by such Mortgage, and they shall be permitted to lease without obtaining a permit.

(f) **Rights Reserved by Declarant.** Notwithstanding the restriction on the percentage of Lots to be issued leasing permits at any time as set forth above, Declarant may grant a leasing permit to the Owner of any Lot(s). The extent and duration of the leasing permit granted by Declarant shall be determined solely by Declarant. Any leasing permit granted by Declarant which extends beyond the termination of Declarant's rights under this Declaration shall be valid and may not be terminated by the Association so long as the Owner complies with the terms and conditions imposed by Declarant.

**Section 2. Sale of Lots.** Except for the Declarant, an Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give written notice to the Board of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish to the Board as part of the notice (i) the name and address of the intended grantee; and (ii) such other information as the Board may reasonably require. This provision shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the Owner shall give written notice to the Board of such Owner's ownership of the Lot. Upon failure of an Owner to give the required notice within the seven (7) day time period provided herein, the Board may levy fines against the Lot and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining such Owner's identity.

## **Article XI**

### **Mortgagee Provisions**

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**Section 1. Notices of Action.** An institutional holder, insurer or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Lot number) (therefore becoming an "eligible holder") will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the

performance by an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Mortgage holders.

**Section 2. No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**Section 3. Notice to Association.** Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 4. Amendments by Board.** Should the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**Section 5. Applicability of Article XI.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Article.

**Section 6. Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## **Article XII**

### **Easements**

**Section 1. Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an

easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant or the Association.

**Section 2. Easements for Use and Enjoyment.**

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests and invitees;

(ii) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time, for an infraction of the Declaration, Bylaws, or rules and regulations;

(iii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant and/or its affiliates, any Lot or Lot Owner, and/or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, interests, options, easements or privileges herein reserved or established for the benefit of Declarant and/or its affiliates, any Lot or Lot Owner, and/or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community); no such Mortgage given by the Association shall be effective unless an instrument agreeing to such Mortgage has been approved by Owners of at least eighty percent (80%) of the Total Association Vote (and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex property to the Community); and

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property; provided, however, no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by Declarant (so long as



Declarant owns any property for development and/or sale within the Community or has the right unilaterally to annex additional property to the Community) and Owners representing at least eighty percent (80%) of the Total Association Vote (other than Declarant so long as the consent of Declarant is required).

(v) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights of way over, under and through the Common Property to governmental entities, any quasi governmental agency or to any utility company or cable television company; and

(vi) all encumbrances and other matters shown by the public record affecting title to the Common Property.

(b) Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot if leased.

**Section 3. Easements for Utilities.** There is hereby granted to the Association blanket easements upon, across, above and under all property within the Community for access to, ingress to, egress from, installation of, repairing, replacing and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity utilities, as well as storm drainage and any other service, such as, but not limited to, a master television antenna system, cable television system, or security system, which the Declarant or Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designees of either, as the case may be, to install, repair, replace and maintain, or to authorize the installation, repairing, replacing and maintaining, of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

**Section 4. Easements for Association Maintenance.** There is hereby expressly granted to the Association a perpetual easement across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 5. Easements for Maintenance and Repair.** There shall be reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping, located on each Lot, which easement shall extend to a distance of not more than five (5) feet as measured from any point on the common boundary between the Lots and along a line perpendicular to such boundary at such

point. The easement shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Lot Owner exercising this easement right shall be liable for the prompt repair of any damage to the Lot over which this easement is exercised which is caused by the maintenance or repair work. The damaged portions of such Lot shall be restored to substantially the same condition as existed prior to the damage.

**Section 6. Easements for Entry.** In addition to the right of the Board to exercise self-help as provided in Article XIII, Section 2 hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security and safety reasons, which right may be exercised by the manager and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

**Section 7. Easements for Entry Features and Street Signs.** There is hereby reserved to the Declarant, the Association, and the designees of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to grade the land under and around the entry features.

**Section 8. Easements for Common Driveways.** Declarant hereby creates joint and reciprocal easements in perpetuity for vehicular and pedestrian traffic in, upon, over and across those areas, if any, shown on any plat for the Community, recorded by Declarant in the land records of the county(ies) where the Community is located, as a common driveway (or such similar or equivalent language as would indicate that such area is a common driveway among two or more Lots) (hereinafter referred to as a "Common Driveway"). These easements shall be for the benefit of any Owner of a Lot served by a Common Driveway and shall be for access to and ingress and egress to and from such Owner's Lot by such Owner, and his or her family members, invitees, and designees in, upon, over and across the Common Driveway. Any Common Driveway shall continue to be used for this purpose by the Owners of the Lots upon served by such Common Driveway and by the subsequent Owners and successors-in-title to such Lots. In connection with the reservation of these easements, it is acknowledged and agreed that the Owner of a Lot benefited by these easements will be required to utilize the easements for access to and ingress and egress to and from such Owner's Lot and that such easements are critical to the future use and enjoyment of such Owner's Lot. No Owner shall be allowed to change, alter or diminish the rights of an Owner of a Lot benefited by these easements to the use and enjoyment of the Common Driveway serving such Owner's Lot. This Section shall not apply to any alleys in the Community and any common driveways which are not located on a Lot in the Community.

Each Common Driveway shall be cleaned, maintained, repaired and replaced by the Association. The cost thereof shall be assessed on an equal basis to each of said Owners, notwithstanding the respective use of the Common Driveway by the Owners of the Lots served by such Common Driveway. In order to protect the value of the respective Lots and to insure the proper use and enjoyment of the respective Lots, the Association shall have the full and unrestricted right to cause the cleaning, maintenance, repair and replacement of the Common Driveway.

Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the Common Driveways which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on about the Common Driveways and the right to grant additional non-exclusive easements to third parties over, under and across the Common Driveways. Declarant hereby reserves for the benefit of Declarant, and grants to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across the Common Driveways for the installation, maintenance, and use of such Common Driveways, traffic directional signs located adjacent to said Common Driveways, grading for proper drainage of said Common Driveways, and related activities and improvements.

**Section 9. Easements for Driveway Turnaround.** Each Lot is hereby granted an appurtenant easement for encroachment onto adjacent Lots to a distance of not more than five (5) feet from the common boundary or boundaries with the adjacent Lots. This easement is for the sole purpose of the placement, existence, use and maintenance of a driveway turnaround as originally constructed on and to serve the Lot. If the driveway turnaround on and serving the Lot is originally constructed so as not to utilize portions of this easement, the portions of this easement not utilized (which could be all of this easement, as the case may be) shall terminate and be null and void forever and of no further force and effect at any time.

This easement shall be for the benefit of the Owner of the Lot served by a driveway turnaround originally constructed in whole or in part on an adjacent Lot and shall be solely for access to, and ingress and egress to and from, such Owner's Lot by such Owner and his or her family members, invitees and designees in, upon, over and across the driveway turnaround serving such Owner's Lot. No other Person shall be allowed to change, alter or diminish the rights of the Owner of the Lot benefited by this easement to the use and enjoyment of the driveway turnaround serving such Owner's Lot. The driveway turnaround shall be cleaned, maintained, repaired and replaced by the Owner of the Lot served by the driveway turnaround. However, the Owner of the Lot served by the driveway turnaround shall not in any way expand this easement/encroachment after initial construction on the Lot.

**Section 10. Easements for Encroachments.** The dwellings located on the Lots may have certain eaves, roof overhangs, building materials and other structures attached to the walls and roofs of such dwellings which may encroach over or extend into the air space, improvements and/or real property located on adjoining or continuous Lots and/or Common Property. All of

the Lots and the Common Property shall be subject to easements for encroachments and for the maintenance, repair and replacement thereof as a result of construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement so long as such encroachment exists. If any such Lot, including any dwelling located thereon, is damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, the Owner of such Lot shall have an easement to reconstruct such encroachments in connection with the reconstruction of such dwelling. Easements shall also exist for encroachment upon the Common Property and/or Lots as necessary for the express purpose of maintenance, repair and restoration of any Lot or structure located thereon. The easements shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance, repair and restoration. The Owner of the Lot exercising the easement right shall be liable for the prompt repair of any damage to the property over which the easement is exercised which is caused by the maintenance, repair or restoration work. The damaged portions of such property shall be restored to substantially the same condition as existed prior to the damage.

**Section 11. Easement for Private Street, Sidewalks and Signs.** Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, nonexclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across any private streets, alleys and drives as depicted on the recorded subdivision plats for the Community. The right-of-way easement herein granted shall permit joint usage of such easement by (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any such easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional nonexclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for the benefit of Declarant and grants to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across any private drives for the installation, maintenance, and use of such drives, sidewalks, traffic directional signs, grading for proper drainage, and related activities and improvements.

**Section 12. Easements for Drainage.** There is hereby reserved by the Declarant and granted to the Association an easement upon, across, above and under all storm water drainage easement areas as shown on the recorded subdivision plat(s) for the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining the storm water drainage system and related facilities serving the Community or any portion thereof (but without obligation on the part of Declarant). This easement shall include the right (but not obligation on the part of Declarant) to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. In addition, there is hereby reserved to the Declarant and granted to the Association a blanket easement across all Lots for creating and maintaining satisfactory drainage in the Community (but without obligation on the part of Declarant); provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure. It is anticipated that increased storm

water run-off across downstream Lots will result from the construction of impervious surface in the Community. Neither the Declarant, the Association nor any builder or Owner constructing according to plans and specifications approved or deemed approved under Article VI, Section 9 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from such construction.

**Section 13. Easement for Walking Trails.** There is hereby reserved to the Declarant and granted to the Association an easement for pedestrian access, ingress, egress, installation, construction, landscaping and maintenance of the walking trails for the Community, over and upon any portion of the Community containing such walking trails, including without limitation, over and across a portion of any Lots, extending fifteen (15) feet from the boundary lines of the Lots which boundary lines are adjacent to the Common Property and consisting of said walking trail and such adjacent portions of the Lots as are deemed necessary for said installation, maintenance, repair, and replacement of the same as provided herein. The easement herein granted shall permit joint usage of such easement by: (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) guests of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of the walking trails which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to grant additional non-exclusive easements to third parties, over, under and across the walking trails. The easement hereby granted shall include, without limitation, the right to erect appropriate signs, grading adjacent property for proper drainage, and related activities and improvements.

**Section 14. Easements for Declarant, Association and Pedestrian Access to Lakes.** Declarant hereby expressly reserves a perpetual easement for itself and its successors and assigns and the Association on, over, across and under such portions of the Community, determined in the sole discretion of Declarant (or its successors and assigns) or the Association, as is reasonably required for maintenance of any lake, lakebed, dam or shoreline located within the Community. Such maintenance, if performed, shall be performed with a minimum of interference to the quiet enjoyment of Owners' property, reasonable steps shall be taken to protect the Community, and damage to the Community shall be repaired by the Person causing the damage at its sole expense.

**Section 15. Courtyard Easement Area.** Declarant may, but shall not be required to, establish a Courtyard Easement Area for certain Lots by recordation of a supplementary declaration describing the Courtyard Easement Area encumbering the applicable Lots.

### **Article XIII**

#### **General Provisions**

**Section 1. Enforcement.** Each Owner and every Occupant of a Lot shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed to his or her Lot, if any. The Board of Directors may impose fines or

other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations or use restrictions and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

**Section 2. Self-Help.** In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

**Section 3. Duration.** The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually, until terminated by the agreement of the Owners of at least eighty (80%) percent of the Lots as provided in the North Carolina Planned Community Act and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community). Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

It is the intention of the Declarant that the Declaration exist and continue until terminated as provided herein, and that it constitute an exception to any automatic termination or expiration provision that might be applicable under the Real Property Marketable Title Act as contained in Chapter 47B of the North Carolina General Statutes, or under any successor or replacement statute or any other applicable law that would or could terminate the Declaration other than in the manner provided for termination herein. Accordingly, the Association, in its discretion, may at any time and from time to time, re-record in the land records of the county where any portion of the Community is located the Declaration or some memorandum or other notice hereof in order to continue the Declaration in full force and effect and/or to qualify the Declaration as an exception to any such automatic termination or expiration provision of the Real Property Marketable Title Act or any other applicable law.

**Section 4. Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article IX hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of Owners of Lots holding at least sixty seven percent (67%) of the Total Association Vote and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. No provision of this Declaration which reserves or grants special rights to the Declarant and/or its affiliates shall be amended without the prior written consent of the Declarant and any affiliates affected by such amendment, so long as the Declarant and/or such affiliates, as the case may be, own any property primarily for development and/or sale in the Community or subject to annexation by the Declarant to the Community.

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in a court of competent jurisdiction in a county in which the Community is located within one (1) year of the recordation of such amendment.

**Section 5. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 6. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision

which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

**Section 7. Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

**Section 8. Conveyance of Property to Association; No Implied Rights.** Declarant and its affiliates may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its members. So long as Declarant owns any property primarily for development and/or sale in the Community or has the right unilaterally to annex additional property to the Declaration, Declarant may, upon written notice to the Association, require the reconveyance by the Association to Declarant or its designee of any Common Property or any portion thereof, improved or unimproved, at no charge to Declarant or its designee, without a vote of the Owners/members of the Association, if the Common Property or portion thereof is: (i) found by Declarant to have been conveyed in error, (ii) needed by Declarant so that Declarant can make adjustments in property boundary lines, or (iii) reasonably determined by Declarant to be needed by Declarant due to changes in the overall scheme of development for the Community.

The Association hereby constitutes and appoints Declarant or its assigns as the Association's agent and attorney-in-fact to accept/make on behalf of the Association any such conveyances and reconveyances and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms, necessary or convenient to effectuate and document any of the foregoing conveyances and reconveyances, and all of the acts of such attorney-in-fact are hereby ratified. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise.

Lakes and dams shall, without limitation, be included in the property that may be conveyed by Declarant and its affiliates and which shall be accepted by the Association. Declarant and its affiliates shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section, including, without limitation, dredging or otherwise removing silt from any lake that may be conveyed, and Declarant and its affiliates shall have no duty or obligation to convey any property or property rights to the Association, regardless of whether or not any such property has been made available for the use of Owners. The Association shall also accept assignment of, and shall assume and agree to perform, any contracts entered into by Declarant and its affiliates for the benefit of the Association, its members or the Owners, including, without limitation, detention pond maintenance agreements and all types of utility easements.

Declarant and its affiliates shall not be required to make any improvements whatsoever to



property to be conveyed and accepted pursuant to this Section, and Declarant and its affiliates shall have no duty or obligation to convey any property or property rights to the Association, regardless of whether or not any such property has been made available for the use of Owners. The Association shall also accept assignment of, and shall assume and agree to perform, any contracts entered into by Declarant and its affiliates for the benefit of the Association, its members or the Owners, including, without limitation, detention pond maintenance agreements and all types of utility easements.

Declarant may reserve, by condition, restriction, lease, license, easement or otherwise, such rights of use and enjoyment in and to all or any portion of the property conveyed as Declarant may reasonably require, so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat, nor the use by the Owners or maintenance by the Association of any property, shall create any rights, easements or licenses in the Association or the Owners, express or implied, unless and until any such property, rights, easements or licenses are conveyed to the Association or the Owners, as the case may be, by an instrument recorded in the land/real estate records of the county(ies) where the property is located.

**Section 9. Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 10. Indemnification.** In accordance with, and to the full extent allowed by, the North Carolina Nonprofit Corporation Act, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director or officer of the Association against any and all expenses, including attorney's fees, imposed upon or reasonably incurred in connection with any action, suit or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the Person is proper under the circumstances.

**Section 11. Construction and Sale Period.** Notwithstanding any provisions contained in this Declaration, the Bylaws, the Articles of Incorporation of the Association, rules and regulations, use restrictions, and any amendments to any of the foregoing, the Declarant hereby expressly reserves unto itself and its successors and assigns a non-exclusive, perpetual right, privilege, and easement with respect to the Community for the benefit of the Declarant, its successors and assigns, over, under, in, and/or on the Community, without obligation and without charge to the Declarant, for the purposes of taking all actions related to or connected with construction, installation, relocation, development, sale, maintenance, repair or replacement in

the Community and any other property now owned or which may in the future be owned by the Declarant (such other property is hereinafter referred to as "Additional Property"). The reserved easement shall constitute a burden on the title to the Community and specifically includes, but is not limited to:

(a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; and the right to tie into any portion of the Community with streets, driveways, parking areas and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee payable to the Association or any Owner for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;

(b) the right to use (continually or from time to time) without charge any clubhouse or similar structure and appurtenant recreational facilities, if any, for business purposes or company functions and any similar use, including, but not limited to, sales and marketing meetings, offices for sales or other employees and agents, a design studio and employee parties; and

(c) the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, construction trailers and sales offices in the Community.

No rights, privileges and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Community, but shall be held independent of such title, and no such right, privilege or easement shall be surrendered, conveyed or released unless and until and except by delivery of a quitclaim deed from the Declarant releasing such right, privilege or easement by express reference thereto.

If these reserved easements are exercised without annexing any Additional Property to the Community, the owners of the affected Additional Property shall share the costs, if any, of using and maintaining utility and similar facilities, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities, with the Owners in the Community in the proportion that the number of completed dwellings on the affected Additional Property bears to the sum of the number of completed dwellings on the affected Additional Property plus the number of Lots in the Community. The costs of maintenance and repair of Community streets and driveways shall likewise be apportioned to the affected Additional Property if the only means of vehicular access to the affected Additional Property is across the Community. For the purposes of this provision, a dwelling on the affected Additional Property shall be considered completed when a certificate of occupancy has been granted. The allocation of expenses and the collection therefor may be done on a monthly, quarterly or annual basis as may reasonably be determined by the Association in accordance with this Declaration. If any of the Additional Property is added to the Community, from the time of the annexation, the sharing of costs and expenses and the use of any property so added shall be governed by this Declaration, rather than by these reserved easements.

This Section shall not be amended without the prior written consent of the Declarant so long as the Declarant owns any property primarily for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community.

**Section 12. Books and Records.**

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by his duly appointed representative and by holders, insurers or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

**Section 13. Financial Statements.** Financial statements for the Association shall be compiled annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's financial statements at the annual meeting, the Owners, by a Majority vote, may require that the financial statements of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all costs associated therewith, such holder shall be entitled to receive a copy of the audited financial statements of the Association within ninety (90) days of the date of the request. In addition, the Association shall make an annual income and expense statement and balance sheet available to all Lot Owners at no charge and within seventy five (75) days after the close of the fiscal year to which the information relates.

**Section 14. Notice of Sale or Lease.** In the event an Owner sells or leases his or her Lot, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

**Section 15. Agreements.** Subject to the prior approval of Declarant, so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided

in Article IX above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**Section 16. Variances.** Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

**Section 17. Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article IV hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant pursuant to Article XIII, Section 4 hereof, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**Section 18. Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation of the Association, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

**Section 19. Use of Recreational Facilities by Nonmembers.** For so long as Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above, Declarant shall have the right to grant to persons who are not members of the Association the right to use the Community recreational facilities (if any). The extent and duration of nonmember use and the fee to be charged therefor shall be determined solely by Declarant. The Declarant may grant nonmember use rights to individuals as an easement appurtenant to such individuals' residential real property so that such use rights shall automatically inure to the benefit of both the original grantees and their respective successors-in-title to such real property. For so long as Declarant or an affiliate of Declarant owns such recreational facilities, nonmember user fees shall be paid to Declarant. If such recreational facilities are conveyed to the Association, nonmember user fees due and payable after the date of such conveyance shall be paid to the Association. Declarant shall determine the amount of nonmember user fees which are due and payable after such conveyance. Such fees shall be paid in equal annual installments to the Association, unless otherwise determined by the

Board. The amount of such installment payments may be increased each year by the Board so long as the percentage increase (as compared to the previous year's installment) does not exceed the percentage increase in the annual assessment levied against members of the Association (as compared to the previous year's assessment).

Unless otherwise determined by the Declarant, any use right granted to nonmembers which extends beyond the termination of Declarant's option to unilaterally subject additional property to this Declaration shall be valid and may not be terminated by the Association so long as the terms and conditions imposed upon nonmember use by Declarant are complied with by the nonmember user.

Declarant hereby expressly reserves unto itself and its successors and assigns a non-exclusive, perpetual right, privilege and easement with respect to the Community for the benefit of Declarant, its successors, assigns and the above discussed nonmember users, over, under, in and/or on the Community (including, without limitation, the above described recreational facilities), without obligation and without charge to the foregoing, for the purposes of taking all actions related to or connected with the granting of nonmember use and the use by such nonmembers as described above. Such right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress of and to the above described recreational facilities and the right of access, ingress, use and egress for vehicular and pedestrian traffic over, under, on or in the Community roads, parking areas and walkways.

Declarant, its partners and affiliates, and the officers, directors, shareholders, employees, agents, successors and assigns of any of the foregoing, shall not be liable for and are hereby held harmless by the Association from any failure of any nonmember to pay a nonmember user fee to the Association where required to do so by this Section. In such case, the Association's sole remedy shall be to suspend the use right of the nonmember who has not timely paid until all amounts owed are paid. Declarant, its partners and affiliates, and the officers, directors, shareholders, employees, agents, successors and assigns of any of the foregoing, shall also not be liable for and are hereby held harmless by the Association from any personal injury or property damage caused by a nonmember entitled to use the above described recreational facilities.

**Section 20. Security.** The Declarant and the Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community and the Lots safer than they otherwise might be. HOWEVER, THE ASSOCIATION, THE DECLARANT, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING, SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY, NOR SHALL ANY OF THE FOREGOING BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM

CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, THE DECLARANT, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING, ARE NOT INSURERS AND THAT EACH PERSON USING THE COMMUNITY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO PROPERTY, TO LOTS, AND TO THE CONTENTS OF LOTS AND THE STRUCTURES THEREON RESULTING FROM ACTS OF THIRD PARTIES.

**Section 21. No Discrimination.** No action shall be taken by the Declarant, the Association or the Board of Directors which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or disability.

**Section 22. Cumulative Effect; Conflict.** The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood Declaration and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and the provisions of any charter, bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood Declaration or Neighborhood association shall be subject and subordinate to those of this Declaration and the Association. In the event of a conflict between the provisions of this Declaration and the provisions of North Carolina law (as to any portion of the Community located in North Carolina) or the provisions of South Carolina law (as to any portion of the Community located in South Carolina), then to the extent that the provisions of North Carolina law or South Carolina law, as applicable, cannot be waived by agreement, North Carolina law shall control.

[continued on next page]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed under seal by its duly authorized officer(s) as of this 14th day of September, 2009.

MCCULLOUGH NEIGHBORHOOD  
ASSOCIATION, INC., a North Carolina  
nonprofit corporation

Andrea Loxstrand  
Witness

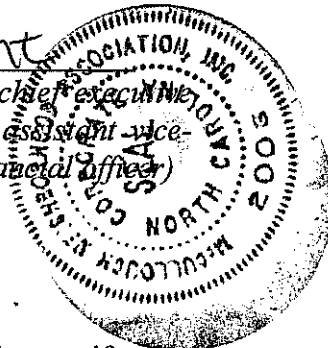
Courtney Hull  
Witness

By: [Signature]

Print Name: Ryan Mann

Title: Vice President

(Must be chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer)



STATE OF GEORGIA  
COUNTY OF COBB

I, Maria Mollise, a Notary Public of Fulton County, State of Georgia, certify that Ryan Mann (the "Signatory") personally came before me this day and acknowledged that he/she is a Vice President of McCullough Neighborhood Association, Inc., a North Carolina nonprofit corporation, and that he/she, in such capacity and being authorized to do so, executed the foregoing on behalf of the corporation.

I certify that the Signatory personally appeared before me this day, and  
(check one of the following and mark through all blank lines or spaces in the certificate)

- ☒ I have personal knowledge of the identity of the Signatory; or  
☐ I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

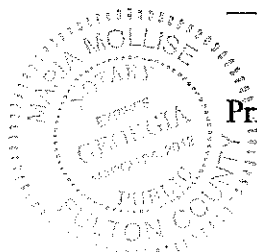
- ☐ a driver's license; or  
☐ in the form of \_\_\_\_\_; or  
☐ a credible witness has sworn to the identity of the Signatory.

The Signatory acknowledged to me that he/she voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.

Witness my hand and official stamp or seal this 14th day of September, 2009.

[Signature]  
Notary Public

Print Name: Maria Mollise



[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 9/21/2012

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

The Association has executed this instrument and affixed the seal below this 14th day of September, 2009 for the purpose of consenting to all of the terms and provisions of this Declaration.

JOHN WIELAND HOMES AND  
NEIGHBORHOODS OF THE  
CAROLINAS, INC., a Georgia corporation

By: F. David Durham

Print Name: F. DAVID DURHAM

Title: Vice President  
(Must be chairman, president, chief executive officer, a vice-president or an assistant vice president, treasurer, or chief financial officer)

STATE OF GEORGIA  
COUNTY OF COBB

I, Maria Mollise, a Notary Public of Fulton County, State of Georgia, certify that F. David Durham (the "Signatory") personally came before me this day and acknowledged that he/she is a Vice President of John Wieland Homes and Neighborhoods of the Carolinas, Inc., a Georgia corporation, and that he/she, in such capacity and being authorized to do so, executed the foregoing on behalf of the corporation.

I certify that the Signatory personally appeared before me this day, and  
(check one of the following and mark through all blank lines or spaces in the certificate)

☒ I have personal knowledge of the identity of the Signatory; or

☐ I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

☐ a driver's license; or

☐ in the form of \_\_\_\_\_; or

☐ a credible witness has sworn to the identity of the Signatory.

The Signatory acknowledged to me that he/she voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.



Witness my hand and official stamp or seal this 14th day of September, 2009.

[Signature]  
Notary Public

Print Name: Maria Mollise

*[Note: Notary Public must sign exactly as on notary seal]*

My Commission Expires: 3-24-2012

 [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

## EXHIBIT "A"

### Definitions

The following words, when used in this Declaration or in any amendment thereof (unless the context shall prohibit), shall have the following meanings:

(a) "Association" shall mean and refer to McCullough Neighborhood Association, Inc., a nonprofit North Carolina corporation, its successors and assigns. If any portion of the Community is located in South Carolina, the Association shall, if necessary, qualify to transact business in South Carolina.

(b) "Board of Directors" or "Board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under North Carolina corporate law.

(c) "Bylaws" shall refer to the Bylaws of McCullough Neighborhood Association, Inc., attached to this Declaration as Exhibit "D" and incorporated herein by this reference.

(d) "Common Property" shall mean any and all real and personal property and easements, leaseholds and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(e) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and (i) such additions thereto as may be made by Declarant (or its Mortgagee or transferee, as provided in the Declaration) of all or any portion of the real property described in Exhibit "C", attached hereto; and (ii) such additions thereto as may be made by the Association (as provided in the Declaration) of other real property.

(f) "Community-Wide Standard" shall mean the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(g) "Declarant" shall mean and refer to John Wieland Homes and Neighborhoods of the Carolinas, Inc., a Georgia corporation, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "B", attached hereto, or in Exhibit "C", attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in

Exhibit "B", attached hereto, and in Exhibit "C", attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one Person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time. An "affiliate" of Declarant shall mean any entity in which Declarant or John Wieland (and/or member(s) of his immediate family) own or control at least twenty (20%) percent of the beneficial interest thereof.

(h) "Lake Lot" means a Lot containing any real property which adjoins, abuts or contains any part of the lake or adjoins Common Property which contains any part of the lake.

(i) "Lot" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site, as shown on any plats for the Community, or amendments thereto, recorded in the land records of the county(ies) where the Community is located. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association.

(j) "Majority" means those eligible votes, Owners or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

(k) "Mortgage" means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(l) "Mortgagee" shall mean the holder of a Mortgage.

(m) "Neighborhood" means each separately developed and denominated residential area within the Community which has been so designated on Exhibit "B" hereof or in one or more Supplementary Declarations. By way of illustration and not limitation, a townhouse development, cluster home development, or single-family detached housing development might each be designated as a separate Neighborhood. The Declarant shall have the right to designate separate Neighborhood status and change the Neighborhood status of any previously designated Neighborhood for any property in the Community. A Neighborhood may (but is not required to) have a separate incorporated mandatory membership Neighborhood association.

(n) "Neighborhood Assessment" means assessments levied against all Lots in a Neighborhood to fund the estimated expenses to be incurred by the Association for the primary benefit of Lots within a Neighborhood, as more particularly set forth in Article IV, Section 5 hereof.

(o) "Neighborhood Association" means any condominium association, homeowners association or mandatory membership owners association having concurrent jurisdiction with the Association over any Neighborhood.

(p) "Neighborhood Declaration" means a declaration of protective covenants, declaration of condominium or similar document encumbering a Neighborhood recorded in the Mecklenburg County, North Carolina and York County, South Carolina land records which subjects all or a portion of the land within such Neighborhood to covenants, restrictions and easements in addition to those contained in this Declaration.

(q) "Occupant" shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

(r) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(s) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(t) "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein and/or designates Neighborhood status as provided herein

(u) "Total Association Vote" means all of the votes attributable to members of the Association (including votes of Declarant) and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community), but specifically excluding the votes of any Owners whose voting rights have been suspended as provided herein

## **EXHIBIT "B"**

### Property Submitted

ALL THAT TRACT OR PARCEL OF LAND lying and being in Pineville, Mecklenburg County, North Carolina, being designated as McCullough Phase 1, Map 1, containing approximately 24.858 acres as shown on that certain Final Plat of McCullough Phase 1, Map 1, dated June 4, 2008, last revised November 21, 2008, prepared by ESP Associates, P.A., certified by and bearing the seal of Brian K. Flaherty, North Carolina Professional Land Surveyor L-4357, which plat was recorded on September 19, 2008 in Map Book 50, Pages 919-920, *et seq.*, Mecklenburg County, North Carolina land records and re-recorded January 13, 2009 in Map Book 51, Page 310, aforesaid records, reference to said plat of survey and the record thereof being hereby made for a more complete description.

## **EXHIBIT "C"**

### **Additional Property which can be Unilaterally Submitted by Declarant**

ALL THAT TRACT OR PARCEL OF LAND lying and being in Mecklenburg County, North Carolina, and in York County, South Carolina, and located within three (3) miles of that real property described in the foregoing Exhibit "B" to this Declaration of Protective Covenants and Easements for McCullough or within three (3) miles of any other real property hereafter subjected to the Declaration of Protective Covenants and Easements for McCullough.