

NORTH CAROLINA  
JACKSON COUNTY

The foregoing certificate of Tasha Nyquist a Notary  
Public is certified to be correct. This instrument was presented for regis-  
tration and recorded in this office in Book 1196 at page 331

This 26th of August 03 11:29.8 a.m.

Register of Deeds

Joe Hamilton

REGISTERED

03 AU 26 A 11:29.8

Joe Hamilton  
REGISTER OF DEEDS  
JACKSON CO. N.C.

Prepared by/Upon recording, please return to:  
Legal Department  
Centex Homes  
385 Douglas Avenue, Suite 1000  
Altamonte Spring, Florida 32714

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

BEAR LAKE RESERVE <sup>SM</sup>

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# DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

## FOR

### BEAR LAKE RESERVE<sup>SM</sup>

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 25<sup>th</sup> day of August, 2003, by Centex Homes, a Nevada general partnership.

#### Article I      Creation of the Community

##### 1.1.      Purpose and Intent.

Declarant (as defined in Article II), as the owner of the real property described in Exhibit "A" (or if not the owner, with the owner's consent), intends, by recording of this Declaration, to establish a general plan of development for Bear Lake Reserve<sup>SM</sup>, a planned community (the "Community"). This Declaration, together with the other Governing Documents described in Section 1.3, provides for the overall development, administration, maintenance, and preservation of Bear Lake Reserve, and provides a flexible and reasonable procedure for its future expansion. An integral part of the development plan is the creation of Bear Lake Reserve Owners Association, Inc. (the "Association") to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents (as defined in Article II).

This document does not and is not intended to create a condominium under North Carolina law.

##### 1.2.      Binding Effect.

This Declaration governs the property described in Exhibit "A," and any other property submitted to this Declaration in the future pursuant to Article IX. This Declaration shall run with the title to such property and shall bind everyone having any right, title, or interest in any portion of such property, their heirs, successors, successors-in-title, and assigns. Declarant, the Association, any Owner (as defined in Article II), and their respective legal representatives, heirs, successors, and assigns, may enforce this Declaration. Each Owner shall automatically be a Member (as defined in Article II) of the Association.

Unless otherwise provided by North Carolina law, in which case such law shall control, this Declaration may not be terminated within 20 years from the date it is recorded without the consent of all Owners; provided, however, that this Declaration is subject to the right of Declarant and/or the Members to amend it as provided in Article XXI. After the initial 20-year period, this Declaration shall automatically be extended for successive 10-year periods in perpetuity unless, within the 12-month period preceding any extension, an instrument signed by the then Owners of at least 80% of the Lots (as defined in Article II) agreeing to terminate this Declaration is recorded. This Section does not authorize termination of any easement created in this Declaration without the consent of the holder of such easement.

##### 1.3.      Governing Documents.

The following chart identifies the documents which govern the Community (as they may be amended from time to time, the "Governing Documents") and describes, in part, the purpose of each.

Every Owner and Occupant of a Lot (as such terms are defined in Article II) shall comply with the Governing Documents.

<b>Declaration</b> (Recorded)	→	creates obligations which are binding upon the Association and all present and future Owners and Occupants of, and others with any interest in, property in the Community
<b>Supplemental Declaration</b> (Recorded)	→	adds property to the Community and/or may impose additional obligations or restrictions on such property
<b>By-Laws</b> (Board adopts; initial By-Laws attached as Exhibit "F")	→	governs the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.
<b>Articles of Incorporation</b> (filed with the Secretary of State; initial Articles attached as Exhibit "E")	→	establish the Association as a nonprofit corporation under North Carolina law
<b>Architectural Guidelines</b> (Declarant or Association may adopt)	→	establish architectural standards and guidelines for improvements and modifications to Lots, including structures, landscaping, and other items on Lots
<b>Use Restrictions</b> (initial set attached as Exhibit "C")	→	govern use of property and activities within the Community
<b>Board Resolutions and Rules</b> (Board may adopt)	→	establish rules, policies, and procedures for internal governance and Association activities; regulates operation and use of Common Area (as defined in Article II)
<b>Lake Use Restrictions</b> (Regulations imposed by Duke Power Company, including, but not limited to, Nantahala Area Shoreline Management Guidelines, together with any rules promulgated by the Board; provided, however, that the more restrictive shall control)	→	establish use restrictions, rules and procedures for use and enjoyment of the Lake (as defined in Article II) and the lakeshore

Additional covenants, conditions, and restrictions may be imposed on all or any portion of the Community, in which case the more restrictive provisions will be controlling. However, no Person (as defined in Article II) shall record any additional covenants, conditions, or restrictions affecting any portion of the Community without Declarant's written consent, during the Development and Sale Period (as defined in Article II), or without the Board's (as defined in Article II) written consent thereafter. Any instrument recorded without the necessary consent is void and of no force or effect.

If there are conflicts between North Carolina law, this Declaration (exclusive of the Use Restrictions), the Architectural Guidelines, the Use Restrictions, the Articles, and the By-Laws, North Carolina law, this Declaration (exclusive of the Use Restrictions), the Architectural Guidelines, the Use Restrictions, the Articles, and the By-Laws (in that order) shall prevail. If any court determines that any provision of the Governing Documents is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or other applications of the provision.

## Article II Concepts and Definitions

### 2.1. Defined Terms.

The terms used in the Governing Documents are given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms are defined as follows:

"Act": Chapter 47F of the North Carolina General Statutes which is also known as the North Carolina Planned Community Act, as the same may be amended and revised from time to time.

"Affiliate": Any Person which (either directly or indirectly, through one or more intermediaries) controls, is in common control with, or is controlled by, another Person, and any Person that is a director, trustee, officer, employee, independent contractor, shareholder, agent, co-venturer, subsidiary, personal representative, or attorney of any of the foregoing. For the purposes of this definition, the term "control" means the direct or indirect power or authority to direct or cause the direction of an entity's management or policies, whether through the ownership of voting securities, by contract, or otherwise.

"Architectural Guidelines": The architectural, design, and construction guidelines and review procedures adopted pursuant to Article IV, as they may be amended from time to time.

"Architectural Review Board" or "ARB": The board established in accordance with Article IV to review plans and specifications for the construction or modification of improvements and to administer and enforce the architectural controls described in Article IV.

"Articles": The Articles of Incorporation of Bear Lake Reserve Owners Association, Inc., filed with the Secretary of State for the State of North Carolina, as they may be amended and/or amended and restated from time to time. A copy of the initial Articles is attached to this Declaration as Exhibit "F" and its terms are incorporated herein by reference.

"Association": Bear Lake Reserve Owners Association, Inc., a North Carolina nonprofit corporation, its successors or assigns.

"Benefited Assessment": Assessments charged against a particular Lot or Lots for Association expenses as described in Section 8.4.

"Board of Directors" or "Board": The body responsible for the general governance and administration of the Association, selected as provided in the By-Laws.

"By-Laws": The By-Laws of Bear Lake Reserve Owners Association, Inc., as they may be amended and/or amended and restated from time to time. A copy of the initial By-Laws is attached to this Declaration as Exhibit "F" and its terms are incorporated herein by reference.



"Class 'B' Control Period": The time period during which the Class "B" Member may appoint a majority of the Board members. The Class "B" Control Period shall end when any one of the following occurs:

- (a) when 90% of the Lots proposed under the Development Plan have been issued certificates of occupancy and have been deeded to Class "A" Members;
- (b) December 31, 2015; or
- (c) earlier, when, in its discretion, the Class "B" Member so determines.

"Common Area": All real and personal property, including easements, which the Association owns, holds, leases, or otherwise has a right to possess or use for the common use and enjoyment of the Owners. Common Area includes the Limited Common Area, as defined below.

"Common Expenses": The actual and estimated expenses which the Association incurs, or expects to incur, for the general benefit of all Owners, which may include a reserve for capital repairs and replacements and administrative charges, as may be authorized pursuant to this Declaration or in any Supplemental Declaration.

"Common Maintenance Areas": The Common Area, together with any other area for which the Association has or assumes maintenance or other responsibilities.

"Community" or "Bear Lake Reserve": The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article IX.

"Community Name": "Bear Lake Reserve" and/or such other name or names as Declarant shall designate for all or any portion of the Community.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing from time to time throughout the Community, or the minimum standards established pursuant to the Architectural Guidelines, Use Restrictions, and/or Board resolutions, whichever establishes the highest standard. The Community-Wide Standard may contain objective elements and subjective elements.

"Cost Sharing Agreement": Any agreement, contract or covenant between the Association and an owner or operator of property adjacent to, in the vicinity of, or within the Community, including any Private Amenity, for the allocation of expenses that benefit both the Association (or its Members) and the owner or operator of such property.

"County": Jackson County, North Carolina.

"Declarant": Centex Homes, a Nevada general partnership, or any successor or assign as developer of all or any portion of the Community that is designated as Declarant in a recorded instrument which the immediately preceding Declarant executes. On all matters, Declarant may act through any of its Affiliates. Any Person who at any time holds the rights of Declarant hereunder and subsequently transfers or assigns the rights of Declarant to another Person shall be known as a "predecessor Declarant" and, unless otherwise agreed in writing, shall be entitled to the rights of a predecessor Declarant established in this Declaration. Whether or not specifically stated, a predecessor Declarant shall be afforded the same protection with respect to matters arising from actions taken during its tenure as Declarant as the predecessor Declarant would have if it were still Declarant.

"Development Plan": The land use or site plan for the Community approved by Centex Homes, as it may be amended from time to time, which includes all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B." Declarant is not obligated to submit property shown on the Development Plan to this Declaration. In addition, Declarant may submit property to this Declaration that is not shown on the Development Plan. Reference should be made to Article X of this Declaration to the respective rights and obligations of Owners and Declarant with respect to the use and development of the Community.

"Development and Sale Period": The period of time during which (a) Declarant and/or any Declarant Affiliate owns any of the property described in Exhibit "A" or "B" to this Declaration; (b) Declarant holds an unexpired right to unilaterally expand the Community pursuant to Section 9.1; or (c) Declarant and/or any Declarant Affiliate owns or controls any Private Amenity.

"Governmental Authority": Any federal, state, county, municipal or other governmental or quasi-governmental department, entity, authority, agency or instrumentality having or asserting jurisdiction over the Community or a portion thereof.

"HUD": U.S. Department of Housing and Urban Development.

"Lake": That certain body of water located adjacent to the Properties and more commonly known as Bear Lake or Bear Creek Lake.

"Lake Use Restrictions": Regulations imposed by Duke Power Company, including, but not limited to, Nantahala Area Shoreline Management Guidelines, together with any rules promulgated by the Board, for use and enjoyment of the Lake and the lakeshore; provided, however, that the more restrictive shall control.

"Legal Costs": The costs which a Person entitled to reimbursement for "Legal Costs" under any provision of the Governing Documents incurs in pursuing legal action (regardless of whether suit is filed or whether arbitration or court action is taken) to enforce the Governing Documents, including, but not limited to, reasonable attorneys' and paralegals' fees, expert witness fees, and court costs, at all tribunal levels.

"Limited Common Area": A portion of the Common Area primarily benefiting one or more, but less than all, Lots or Service Areas, as described in Article XIII.

"Limited Common Expenses": The actual and estimated expenses which the Association incurs, or expects to incur, for the benefit of Owners of Lots benefiting from a Limited Common Area or within a particular Service Area, which may include a reserve for capital repairs and replacements and administrative charges, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Service Area or Lots.

"Lot": A portion of the Community, whether improved or unimproved, which may be independently owned and conveyed, and which is improved, or intended by Declarant to be improved, with a dwelling. The term shall refer to the land, if any, which is part of the Lot as well as any improvements on the Lot, including, by way of illustration and not limitation, cabins, cottages, and detached homes on separately platted lots. The boundaries of each Lot shall be shown on a Plat. In the case of a building containing multiple dwellings for independent sale (e.g., attached villa or townhouse units or condominium units), each dwelling that may be sold independently shall be a separate Lot.

A parcel of land shall be deemed to be a single Lot until such time as a Plat subdivides all or a portion of the parcel. Thereafter, the subdivided portion shall contain the number of Lots shown on the Plat. Any portion not subdivided shall continue to be a single Lot.

**"Member"**: A Person subject to membership in the Association, as described in Section 6.2. There initially are three membership classes -- Class "A," Class "B," and Class "C."

**"Mortgage"**: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot and held by an institutional lender. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage. The term "Institutional Lender" shall include any bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, a credit union, real estate or realty investment trust, any agency of the Federal government, the Federal Investment Mortgage Association, the Federal Home Loan Mortgage Corporation, or similar governmental or quasi-governmental agencies.

**"Occupant"**: Any tenant of a Lot and the Owner's and/or a tenant's household members, guests, invitees, agents, and contractors who lawfully or unlawfully occupy or enter a Lot. All actions or omissions of any Occupant shall be deemed the actions or omissions of the Owner of such Lot.

**"Owner"**: The record title holder to any Lot, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation (e.g., a Mortgagee). If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

**"Person"**: An individual, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

**"Plat"**: Any recorded plat for all or any portion of the Community. With respect to any condominium within the Community, the term Plat shall be deemed to include any recorded plans of the condominium, including, but not limited to plans designating the individual condominium unit boundaries. As to a particular portion of the Community, the applicable Plat shall be deemed to be the Plat (and/or Plat amendment, revision or similar instrument, as applicable) to which such portion of the Community is subject or which otherwise affects such portion of the Community at the time this applicable determination is to be made.

**"Private Amenity"**: Certain real property and any improvements and facilities thereon which are located adjacent to or in the vicinity of the Community and which are designated by Declarant as Private Amenities. Private Amenities may be owned and operated, in whole or in part, by Persons other than the Association for recreational, social or other purposes. Declarant hereby designates any property that is now or hereafter owned by The Club at Bear Lake Reserve (the "**Club**") as a Private Amenity and reserves the right to designate additional Private Amenities in its sole discretion. Private Amenities shall not be subject to this Declaration and shall not be Common Areas or Lots. The use of the term "Private Amenity" shall not be construed to imply or require a private club. Private Amenities may be operated on a club membership, daily fee, use fee, public, or private basis or otherwise.

**"Regular Assessment"**: Annual assessments levied to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 8.1(a).

**"Roadways"**: Those private streets and roadways located in the Community, including, but not limited to, any right-of-way within the Community as depicted on any Plat and owned by the Association as part of the Common Area, excluding however, any shared or private driveway.

"Service Area": A group of Lots designated as a separate Service Area pursuant to this Declaration or a Supplemental Declaration for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the Association which are not provided to all Lots. A Service Area may be comprised of more than one housing type and may include noncontiguous parcels of property. A Lot may be assigned to more than one Service Area. Where the context permits or requires, the term "Service Area" shall also refer to a Service Area Committee established in accordance with the By-Laws to represent the interests of Owners of Lots within a Service Area ("Service Area Owners"). Service Area boundaries may be established and modified as provided in Section 7.11.

"Service Area Assessments": Assessments levied against the Lots in a particular Service Area to fund Limited Common Expenses, as described in Section 8.1(b).

"Service Area Association": A condominium association or other owners association having concurrent jurisdiction with the Association over any Service Area.

"Special Assessment": Assessments levied against Lots in accordance with Section 8.3 to cover unbudgeted expenses or expenses in excess of those budgeted.

"Supplemental Declaration": A recorded instrument which subjects additional property to this Declaration and/or imposes additional and/or modified restrictions and obligations on the land described in such instrument.

"Use Restrictions": The initial use restrictions, governing activities on the Lots and the Common Areas set forth in Exhibit "C," as they may be changed in accordance with Article III or Article XXI or otherwise, as amended from time to time.

"VA": U.S. Department of Veterans Affairs.

"Voting Delegate": Any representative selected by the Class "A" Members within each Service Area to be responsible for casting all Class "A" votes attributable to Lots in the Service Area on matters requiring a vote of the membership. The term "Voting Delegate" shall also refer to any alternate Voting Delegate acting in the absence of a Voting Delegate.

"Voting Group": One or more Members who vote on a common slate for election of directors to the Board of Directors of the Association, as more particularly described in Section 6.6 of this Declaration.

"Wetland": Any area within the Community identified or designated as habitat for wetland species of plants and/or animals by the County or by the United States Army Corps of Engineers, or by any other agency of the State of North Carolina or the United States government.

## 2.2. Interpretation of Certain References.

(a) Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the public records of the County, or such other place designated as the official location for filing documents affecting title to real estate in the County in order to make them a matter of public record.

(b) Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval which, unless otherwise expressly qualified in the

specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power, right and/or discretion to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

### Article III      Occupancy of Lots

#### 3.1.      General.

In addition to the initial Use Restrictions set forth in Exhibit "C" which may be modified as provided herein, the Lots shall be subject to the following. The restrictions set forth in this Section may be amended only in accordance with Article XXI and other applicable provisions of this Declaration.

(a) Residential and Related Uses. Lots shall be used primarily for residential and related purposes (including, without limitation, use as a home office). No business shall be conducted in, on, or from any Lot, except that an Owner or Occupant using the dwelling on a Lot primarily for residential purposes may also conduct business activities on such Lot, if the business activity, as determined in the Board's discretion:

- (i) is not apparent or detectable by sight, sound or smell from outside the Lot;
- (ii) complies with applicable zoning and other legal requirements and other requirements of this Declaration;
- (iii) does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees; and
- (iv) is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the use and enjoyment of other Lots by the Owner thereof or the security or safety of others within the Community.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (A) such activity is engaged in full or part time; (B) such activity is intended to or does generate a profit; or (C) a license is required.

No Lot shall be rezoned to any classification allowing commercial, institutional, or other non-residential use without the express written consent of the Association and Declarant. Notwithstanding anything in this Article to the contrary, Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the party pursuing the unapproved rezoning, in addition to and not in limitation of Declarant's or the Association's other rights and remedies.

This Section shall not apply to restrict the activities of Declarant, any Declarant Affiliate or the owner or operator of any Private Amenity nor shall it restrict the activities of Persons Declarant approves with respect to the development, construction, and sale of property in the Community. This Section shall

not apply to Association activities related to the provision of services or to operating and maintaining the Community, including, without limitation, the Community's recreational and other amenities.

Leasing of a Lot by the Owner thereof for residential occupancy shall not be considered a "business" within the meaning of this subsection.

(b) Leasing. For purposes of this Declaration, "leasing" is the regular, exclusive occupancy of a dwelling by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, without limitation, a fee, service, or gratuity. The improvements on the Lot may be leased only in their entirety (e.g., separate rooms within the same dwelling may not be separately leased); provided, however, that a detached "in-law suite" or "guest house," (or a "lock out" unit or other portion of a residential dwelling designed for separate occupancy) the construction of which was approved pursuant to Article IV, may be independently leased. The Architectural Guidelines may prohibit, or limit the number of, in-law suites, guest houses, and/or lock out units that may be constructed on a Lot.

All leases shall be in writing and shall include an acknowledgment by the tenant that the tenant and all Occupants of the leased Lot are bound by and obligated to comply with the Governing Documents. The Owner or the Owner's designee shall be responsible for making a copy of the Governing Documents available to the tenant prior to execution of the lease and shall monitor enforcement and compliance with the Governing Documents by the tenant and all Occupants of the leased Lot.

Prior to the commencement of the lease term, the Owner or the Owner's designee shall notify the Board or the Association's managing agent of the lease and provide such information as the Board and/or the Association's managing agent may reasonably require, which may include, but shall not be limited to, the name, address, and telephone number of the Lot's Owner and of the tenant; the date the tenant's occupancy commences and ends; and a description of each motor vehicle to be operated by the Occupants of the leased Lot within the Community during the lease term. Declarant may, from time to time during the Development and Sale Period, adopt and modify reasonable rules regulating leasing and subleasing consistent with this subsection (b). Such rules shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants. The provisions of this subsection (b) and any rules adopted as aforesaid may be overruled, canceled, or modified by the Members only at a regular or special Association meeting by Members holding 67% of the total Class "A" votes in the Association and the Declarant, during the Development and Sale Period. Unless adopted by Declarant pursuant to the foregoing, leases shall not be subject to any minimum lease terms.

No Owner may assign or otherwise transfer the Owner's obligations under this Declaration to any tenant or other Occupant. The Association shall have the right to enforce the covenants, conditions, and restrictions set forth in this Declaration against the Owner, the tenant, or any Occupant of the Lot, individually or collectively. The Association shall not be bound by any provision in the lease or other agreement between Owner and such Owner's tenant, including, without limitation, those requiring prior notice or imposing other conditions on the rights of the Association.

The Association shall be deemed a third party beneficiary of all leases of Lots, and shall have the right, but not the obligation, to enforce the terms and conditions of such leases against the tenant or the Owner. Notwithstanding the foregoing, the Association's failure to object to any term or condition of a lease or occupancy arrangement shall not be deemed to be consent or approval of any term or condition of the lease, nor shall the Association have any obligation whatsoever for the performance of any obligation of Owner or tenant contained in the lease or otherwise.

Notwithstanding any condition of any lease to the contrary, each Owner, by acceptance of the deed to a Lot, hereby covenants and agrees with the Association and all other Owners of Lots in the Community, including, but not limited to, Declarant, that the Owner shall be responsible for any violation of the Governing Documents resulting from the acts or omissions of the Occupants of the leased Lot to the same extent that Owner would be liable for such violation if it had resulted from the acts or omissions of the Owner. The Owner's obligations hereunder shall be deemed a guaranty of performance by such Owner's tenant and the Occupants of the leased Lot, and the Association shall have the right to take any action or seek any remedy for a tenant's or an Occupant's failure or refusal to comply with the Governing Documents directly from or against the Owner without first taking such action or obtaining such remedy from or against the tenant or Occupant.

The Association is prohibited from operating a rental program. Therefore, no expense associated with any rental program shall be a Common Expense of the Association. Declarant makes no representations as to whether any legal requirements apply to the renting of a Lot. Owners should perform their own investigations in such regard.

(c) Signs. No sign of any kind shall be erected by or on behalf of an Owner or Occupant without the prior written consent of the ARB, except: (1) signs required to comply with or obtain the benefit of applicable laws (e.g., beware of dog signs); and (2) not more than one sign indicating that the Lot is receiving security services. All approved or permitted signs shall be professionally prepared, shall be the kinds normally displayed in residential neighborhoods with homes of comparable type, quality, and price range to those in the Community and shall be of a size deemed reasonable by the ARB in its sole discretion. Unless in compliance with this Section, no signs shall be posted or erected by any Owner or Occupant within any portion of the Community, including the Common Area, any Lot, or any structure or dwelling located on the Common Area or any Lot (if such sign would be visible from the exterior of such structure or dwelling as determined in the ARB's sole discretion). In addition, no signs shall be posted or erected by any Owner or Occupant within any Private Amenity, within the Lake or within the area between the waterfront boundary of a Lot and the waterline of the Lake.

Declarant and the ARB reserve the right to prohibit all other signs and to restrict the size, content, color, lettering, design and placement of any approved or permitted signs. In addition, the Architectural Guidelines may implement a standard sign program, which may vary according to, among other factors, location within the Community, product type or intended use. This provision shall not apply to entry, directional, or any other signs installed by Declarant, any Declarant Affiliate or the owner or operator of any Private Amenity.

(d) Occupants Bound. Every Owner shall cause the Occupants of his or her Lot to comply with the Governing Documents and shall be responsible for all violations of the Governing Documents and any damage they cause to the Common Maintenance Areas, notwithstanding the fact that such Persons also are personally responsible for complying and may be sanctioned for any violation.

(e) Subdivision and Replatting of a Lot. Lots may not be subdivided or their boundary lines changed except with Declarant's or the Board's prior written approval. Declarant may subdivide, change the boundary lines of, and replat any Lot it owns without Board approval. In addition, during the Development and Sale Period, Declarant or any Declarant Affiliate may convert Lots it owns into Common Area.

Any Owner owning two adjoining Lots may, with the prior written approval of Declarant during the Development and Sale Period, and the Association thereafter, combine such Lots into a single building site for the purpose of constructing one dwelling and such other improvements as are approved hereunder; provided, however, that each of the Lots so combined shall continue to be treated as a separate

Lot for purposes of voting and assessment. Approval by the Association or Declarant shall not be deemed to constitute, or to waive the necessity for, compliance with any County or other applicable requirements for such combination.

(f) Lodging; Timeshares. No Lot may be used as a rooming house, hostel, hotel or for timesharing, except as may be established by Declarant. The term "timesharing" shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess all or any portion of a Lot rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of 30 consecutive calendar days or less.

3.2. Rules and Regulations. In addition to the Use Restrictions set forth in Exhibit "C", the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Community regarding the use of Common Areas. Such rules shall be distributed to all Owners 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 Members holding a majority of the total Class "A" votes in the Association. Any adoption, modification, addition, deletion, or cancellation of rules shall be subject to Declarant's prior written approval during the Development and Sale Period.

3.3. Adjacent Properties. In order to preserve and enhance the aesthetics and environment within the master planned community known as Bear Lake Reserve and the collective interests and quality of life of Owners, each Owner, by acceptance of a deed to a Lot, agrees to refrain from taking any action or maintaining any condition that would constitute a violation of the Governing Documents within or upon any property located adjacent to or in the vicinity of the Properties (the "adjacent properties"). For purposes of this Section, the adjacent properties shall mean and include: (a) all public rights-of-way abutting the Properties; and (b) that lakeshore property adjoining or otherwise located adjacent to the Community that is between the waterfront boundary of Lots as shown on Plats and the waterline of the Lake and owned by Duke Power Company.

3.4. Owners' Acknowledgment and Notice to Purchasers.

Each Owner, by accepting a deed, acknowledges and agrees that the use, enjoyment, and marketability of such Owner's Lot is limited and affected by the terms of the Governing Documents, including Use Restrictions and Board rules, which may change from time to time. Copies of the current Use Restrictions and Board rules may be obtained from the Association as provided in the By-Laws.

**Article IV      Architecture and Landscaping**

4.1. General.

Except for work done by or on behalf of Declarant or any Declarant Affiliate, no structure or thing shall be placed, erected, or installed upon any Lot, and no improvements of any kind or other work (including, without limitation, staking, clearing, excavation, grading and other site work, exterior alterations or additions, or planting or removal of landscaping) shall take place within the Community, except in compliance with this Article and the Architectural Guidelines.

Any Owner may remodel, paint, or redecorate the interior of any structure on such Owner's Lot without approval hereunder. However, modifications to the interior of screened porches, patios, and any other portions of a Lot or structure visible from outside a structure are subject to approval under this Article.



Improvements shall be constructed only by qualified Persons acceptable to the ARB as set forth in Section 4.3(d). Owners shall be responsible for obtaining all permits and approvals from the County and other governmental agencies. Except as may be set forth in a purchase and sales agreement executed by Declarant or its Affiliate, neither Declarant nor any Declarant Affiliate have made any representations ensuring or guaranteeing the availability of such permits or approvals, including but not limited to permits for docks.

This Article does not apply to the Association's activities during the Class "B" Control Period, nor to Declarant's, or its Affiliates', activities during the Development and Sale Period, nor to improvements made by the owner or operator of any Private Amenity.

#### 4.2. Architectural Review.

(a) Architectural Review Board. The ARB shall consist of one or more persons and shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for architectural and other improvements within the Community. Members of the ARB need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the ARB may establish.

Until five years after termination of the Development and Sale Period, unless Declarant earlier terminates its rights in a recorded instrument, Declarant retains the right to appoint all members of the ARB who shall serve at Declarant's discretion. In reviewing and acting upon any request for approval, ARB members appointed by Declarant act solely in Declarant's interest and owe no duty to any other Person. There shall be no surrender of this right prior to the specified time except in a written instrument in recordable form executed by Declarant. Upon the expiration, termination, or surrender of such right, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

Declarant or the ARB may, from time to time, delegate or assign all or any portion of its rights under this Article to any other Person or committee. Any such delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) the right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) the right to veto any decision which the delegator determines, in the delegator's discretion, to be inappropriate or inadvisable for any reason. The jurisdiction of any other entities shall be limited to such matters as may be specifically delegated.

Unless and until such time as Declarant or the ARB delegates any of its reserved rights to the Association or Declarant's rights under this Article terminate, the Association shall have no power over matters governed by this Article IV.

(b) Fees; Assistance. The ARB may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include, without limitation, the reasonable costs incurred in having any application reviewed by architects, landscape architects, engineers, or other professionals the ARB employs or with whom it contracts. The Board may include the compensation of such Persons in the Association's annual operating budget.

#### 4.3. Guidelines and Procedures.

(a) Architectural Guidelines. Declarant may prepare and make available the initial Architectural Guidelines, which may contain general provisions applicable to all of the Community as well as specific provisions that may vary according to, among other factors, location within the

Community or proximity to the Lake or a Private Amenity, product type or intended use. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the ARB. The Architectural Guidelines are not the exclusive basis for the ARB's decisions, and compliance with the Architectural Guidelines does not guarantee an application's approval.

If the same exist, Declarant shall have sole and absolute and full authority to amend the Architectural Guidelines, from time to time, during the Development and Sale Period. Declarant's right to amend shall continue even if its reviewing authority is delegated to the ARB, unless Declarant also delegates the power to amend to the ARB. Upon termination or delegation to the ARB of Declarant's right to amend, the Board may amend the Architectural Guidelines, subject to Declarant's veto right under Section 4.2(a) (if still applicable).

If the same exist, amendments to the Architectural Guidelines shall be prospective only. They shall not require modifications to or removal of structures, improvements, and other things previously approved once the approved construction or modification has begun. However, any new work or improvements must comply with the Architectural Guidelines as amended.

(b) Procedures. Unless the Architectural Guidelines provide otherwise, no construction activities or other activities described in Section 4.1 may begin until a request is submitted to and approved in writing by the ARB. The request must be in writing and be accompanied by plans and specifications and other information the ARB and/or the Architectural Guidelines require. Plans and specifications shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction or other activity as the ARB deems relevant.

In reviewing each submission, the ARB may consider any factors it deems relevant, including, without limitation, harmony of the proposed design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The ARB shall have the discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as they are made in good faith and in accordance with the required procedures.

The ARB shall make a determination on each application within 45 days after receipt of a completed application and all other information the ARB requires. The ARB may: permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until 45 days after the final, required submission stage. The ARB may: (i) approve the application, with or without conditions; (ii) approve a portion of the application, with or without conditions, and disapprove other portions; or (iii) disapprove the application. The ARB shall notify the applicant in writing of a final determination on any application. In the case of disapproval, the ARB may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

After the initial 45-day period has elapsed, if the Owner has not received notice of the ARB's determination, the Owner may make a second written request for approval of the plans previously submitted which shall be marked "Second Request." If the ARB fails to respond within seven business days from receipt of the Second Request, approval shall be deemed given. However, no approval (or improvement governed by such approval), whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines or other Governing Documents unless a written variance has been granted pursuant to Section 4.5.

Notwithstanding anything to the contrary in this Declaration or the By-Laws, Owners shall send any such "Second Request" via the U. S. Postal Service, certified mail, return receipt requested, or by

commercial overnight carrier that obtains a signed receipt upon delivery. A Second Request shall be deemed made, and the 7 business day time period shall commence running, on the date of the ARB's actual receipt of the Second Request, as evidenced by its signature on the return receipt provided by the U. S. Postal Service or in the records of the overnight carrier, as applicable.

As part of any approval, the ARB may require that construction, landscaping, and other approved activities in accordance with approved plans commence and be completed within a specified time period. If such actions do not commence within the required period, the approval shall expire and the Owner must reapply for approval before commencing any activities within the scope of this Article. Once commenced, such activities must be diligently pursued to completion. All elements of the approved activities and/or plans shall be completed within two years of commencement unless a shorter or longer period is otherwise specified in the notice of approval or the Architectural Guidelines, or unless the ARB, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action by the Association or Declarant.

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, unless written approval to modify any application has been obtained.

Declarant or the ARB, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

(c) Delinquent Assessments and Other Charges. Notwithstanding the provisions of subsection (b) above, any application for the approval of plans and specifications as set forth in this Article shall be deemed to be disapproved unless and until any and all delinquent assessments and other charges permitted by this Declaration have been paid current by the Owner submitting such plans and specifications for approval.

Subsequent to the approval of plans and specifications pursuant to this Article, if the Owner shall become delinquent in the payment of assessments or other charges permitted by this Declaration at any time during the prosecution of the approved work, the Owner shall be deemed to be in violation of such approval and shall be subject to any means of enforcement set forth in the Governing Documents.

(d) Architect, Builder and General Contractor Approval. In order to ensure that appropriate standards of construction are maintained throughout the Community, all architects, builders and general contractors must be approved by the ARB prior to engaging in any construction activities within the Community. The ARB may implement an approval process utilizing established criteria and requiring the submission of a written application for approval. Approval of any plans may be withheld until such time as the Owner's architect, builder or contractor has been approved by the ARB. Approval of an architect, builder or general contractor may be conditioned upon an agreement with the ARB to maintain certain insurance coverages required by the ARB, pay construction deposits to ensure completion of a project without damage to the Community, and pay fees determined by the ARB, from time to time. Both the criteria and the application form are subject to change in the sole discretion of the ARB. Approval of architects, builders and contractors may not be construed as a recommendation of a specific architect, builder or contractor by the ARB or Declarant or any Declarant Affiliate, nor a guarantee or endorsement of the work of such architect, builder or contractor. The criteria and requirements established by the ARB for approval of architects, builders and contractors are solely for Declarant's and Declarant's Affiliates' protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved architect, builder, or contractor. Owner's selection of an architect, builder, or contractor shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner

may have about the qualifications of such architect, builder or contractor. Furthermore, Owner waives any and all claims and rights that Owner has or may have now or in the future, against the ARB, Declarant, any Declarant Affiliate, and/or any predecessor Declarant.

#### 4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be feasible to identify objectionable features until work is completed, at which time, it may or may not be unreasonable to require that such objectionable features be changed. However, the ARB may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the ARB's right to withhold approval of similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### 4.5. Variances.

The ARB may authorize variances from compliance with the Architectural Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require or permit. No variance shall: (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ARB from denying a variance in other circumstances. A variance requires Declarant's written consent during the Development and Sale Period.

#### 4.6. Release of Liability.

This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community. Review and approval of any application pursuant to this Article may be based on purely aesthetic considerations. The ARB is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that every dwelling is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners. Areas within the Community include various conditions that may affect construction, including, but not limited to, steep mountain slopes, rock outcroppings, and unstable or expansive soil conditions. These conditions may necessitate the use of special construction techniques to build on or use Lots. Owners are encouraged to seek professional advice and assistance prior to the commencement of construction on any Lot.

Each Owner releases Declarant, Declarant's Affiliates, any predecessor Declarant, the Association, its officers, the Board, the ARB, the Association's managing agent, any committee, or any member of any of the foregoing for the approval of, disapproval of, or failure to approve or disapprove any plans; soil conditions, drainage, or other general site work related to approved work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any owner or their contractor or their subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction or activities on or modifications to any Lot. In all such matters or claims related therefrom, the Association shall defend, indemnify and hold harmless Declarant, Declarant's Affiliates, any predecessor Declarant, the Board, the ARB, the members of each, and the Association officers as provided in the Articles.

Each application to the ARB shall be deemed to contain a representation and warranty by the Owner that use of the plans submitted does not violate any copyright associated with the plans. Neither the submission of the plans to the ARB, nor the distribution and review of the plans by the ARB, shall be

construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to the ARB, shall hold the ARB, Declarant, Declarant's Affiliates, any predecessor Declarant, the Association, its officers, the Board and the ARB, harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process of this Declaration.

#### 4.7. Enforcement.

Any construction, alteration, improvement, or other work done in violation of this Article or the Architectural Guidelines is subject to enforcement action pursuant to Section 7.5, which actions may be taken by the Association, Declarant, or the ARB. Any act of any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed to be an act done by or on behalf of such Owner.

### **Article V      Maintenance and Repair**

#### 5.1. Maintenance of Lots.

(a) Each Owner must maintain such Owner's Lot, including, without limitation, all structures, landscaping, and other improvements comprising the Lot, in a manner consistent with the Governing Documents, the Community-Wide Standard, and any other applicable covenants, except to the extent that such maintenance responsibility is assumed by the Association under this Declaration or any Supplemental Declaration or additional covenants applicable to such Lot. In addition, each Owner shall maintain the driveway, trash container and mailbox serving exclusively such Owner's Lot and any landscaping installed by such Owner (such installation being subject to approval as required under Article IV) that is located between the boundary of such Owner's Lot and the shoulder of any Roadway lying adjacent to the boundary of such Owner's Lot, unless the Association assumes all or part of such maintenance responsibility, and then to the extent not assumed by the Association.

(b) Declarant or a builder may have constructed or installed drainage swales, drainage lines, and/or other equipment on a Lot for the purpose of managing and/or containing the flow of surface water, if any, found upon such Lot or draining from adjacent property, from time to time. Except to the extent that such responsibility is assigned to or assumed by the Association pursuant to this Declaration or any Supplemental Declaration, each Owner shall be responsible for the maintenance, operation, and repair of such drainage swales, drainage lines, catch basins, and other equipment on such Owner's Lot. Maintenance, operation, and repair shall mean and include, without limitation, the exercise of practices, such as mowing, removal of debris and erosion repair, which allow the drainage swales, drainage lines, catch basins, and other equipment to provide drainage, water storage, conveyance, or other storm water management capabilities. Filling, excavation, construction of fences, or otherwise obstructing the surface water flow in or into the drainage swales, drainage lines, catch basins, and other equipment is prohibited. No alteration of a drainage swale, drainage line, catch basin, and other equipment shall be authorized and any damage to any drainage swale, drainage line, catch basin, and other equipment, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale, drainage line, catch basin, and other equipment returned to its former condition as soon as possible by the Owner(s) of the Lot upon which the drainage swale, drainage line, catch basin, and other equipment is located. No Owner may interfere with the water flow from or to adjacent property through streams, drainage swales, drainage lines, catch basins, and other equipment located on a Lot.

(c) Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement. The maintenance, repair, replacement, and other obligations of the Association and Owner specified in this Declaration shall be performed as and when the Board determines it necessary to maintain the property to a level consistent with the Community-Wide Standard.

## 5.2. Insurance on Lots; Casualty Losses.

Each Owner shall maintain property insurance providing fire and extended coverage at full replacement cost, less a reasonable deductible, on all insurable improvements located on such Owner's Lot, to the extent such responsibility is not assigned to or assumed by the Association or a Service Area Association pursuant to this Declaration or any applicable Supplemental Declaration. In addition, every Owner shall be obligated to obtain and maintain at all times insurance covering consequential damages to any other Lot or the Common Area due to occurrences originating within the Owner's Lot caused by the negligence of the Owner, the failure of the Owner to maintain the Lot, and any other casualty within the Lot which causes damage to the Lots or the Common Area, to the extent such coverage is not provided by policies maintained by the Association or to the extent insurable losses may result in the Owner's liability for payment of deductibles under the Association's policies. Such insurance policy or policies shall name the Association as an additional insured.

Each Owner shall provide a certificate evidencing such insurance to the Association within 10 days of any written request from the Board of Directors. In addition, if the Board so requests, each Owner shall file with the Association a copy of the individual policy or policies covering such Owner's Lot. Each Owner shall promptly notify the Board in writing in the event such policy on such Owner's Lot is canceled. In the event that an Owner fails to obtain any insurance which the Owner is required to obtain hereunder, or permits such insurance to lapse, the Association may, but shall not be obligated to, obtain such insurance on behalf of the Owner and assess the costs thereof to the Owner and the Owner's Lot as a Benefited Assessment.

Upon Board resolution and at least 60 days' prior written notice to each Owner of an affected Lot, the Association may elect, but shall have no obligation, to obtain a blanket insurance policy providing property insurance for all structures on all Lots within the Community, or on all Lots within any Service Area. Inclusion in the budget provided to the Owner shall be adequate notice. In such event, the Owners shall be relieved of their insurance responsibility only to the extent such responsibility is assumed by the Association. The costs of such insurance shall be a Common Expense, if provided on all Lots, or a Service Area Expense, if provided to less than all Lots. Any such policy obtained by the Association may exclude fixtures, finishes, contents, and improvements to the interior of the structures on the Lot and any exterior improvements made by an Owner or Occupant of the Lot. Following such an assumption of insurance responsibility, the Association may, at any time, upon not less than 30 days' written notice to each Owner, discontinue such blanket insurance coverage and in such event each Owner shall immediately obtain in such Owner's own name and at such Owner's own expense the insurance coverage for such Owner's Lot and structures thereon.

Regardless of whether the insurance required hereunder is obtained by the Association or the Owners, in the event of a casualty loss, the Association shall be entitled to file a claim against such insurance for the cost of any repair or reconstruction to the Lot and improvements thereon which is the Association's responsibility, and the Owner shall pay the amount of any deductible and shall be responsible for any deficiency in the insurance proceeds. The Association shall be entitled to adjust with the insurance provider the amount of any proceeds payable to the Association and the Owner thereunder, based upon the amount necessary to enable the Owner and the Association each to repair and replace those portions of the Lot and improvements thereon which are their respective responsibilities.

If the Owner is required to obtain insurance hereunder and such insurance is insufficient, the Association shall be relieved of any obligation to maintain, repair, and replace damaged or destroyed portions of the Owner's Lot, to the extent of such insufficiency. Alternatively, the Association may perform required repairs, whether the responsibility of the Association or the Owner, and assess all costs to the Owner and the Owner's Lot as a Benefited Assessment pursuant to Section 8.4.

In the event of damage to or destruction of a structure on a Lot, the Owner shall promptly repair or reconstruct the structure in a manner consistent with the original construction or other plans and specifications approved in accordance with Article IV, except that if the Association or a Service Area Association has assumed responsibility for insurance coverage hereunder, the Association or Service Area Association, as applicable, shall, subject to the limitations above, be responsible for repair or reconstruction of those portions of the structure on the Lot for which such association has expressly, in writing, assumed insurance responsibility. Alternatively, and with the approval of the ARB in accordance with Article IV, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat, attractive landscaped condition consistent with the Community-Wide standard.

## **Article VI      The Association and its Members**

### **6.1.      Function of Association.**

The Association is the entity responsible for management, maintenance, operation, and control of the Common Maintenance Areas. The Association also has primary responsibility for administering and enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and applicable law. The Board shall be responsible for management of the Association and may contract with a property manager for such purposes. The Board is appointed or elected as provided in the By-Laws. Membership in the Association is appurtenant to and may not be severed from the Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in this Declaration, the Articles of Incorporation, or By-Laws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot.

### **6.2.      Membership.**

The Association initially shall have three classes of membership, Class "A," Class "B," and Class "C." Class "A" Members are all Owners except the Class "B" Member. The sole Class "B" Member shall be Declarant. The Class "B" membership shall terminate simultaneously with the termination of the Class "B" Control Period. The Class "C" Members shall be those owners or operators of Private Amenities, including, but not limited to the Club, that have entered into an agreement with the Association for the Association to provide water and/or other utilities and services to the Private Amenities.

There shall be only one Class "A" membership per Lot. If a Lot is owned by more than one Person, each co-Owner shares the privileges of the membership, subject to reasonable Board regulation and the voting restrictions described in Section 6.3(a) and in the By-Laws. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner that is not an individual (e.g., a corporation) may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Association's Secretary.

Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Lots within any additional property made subject to this Declaration pursuant to Article IX, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

### 6.3. Voting.

(a) Class "A". Class "A" Members have one equal vote for each Lot they own, except that there is only one vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Section 8.8.

In any situation where there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

If Voting Delegates have been elected pursuant to Section 6.5, the vote for each Lot owned by a Class "A" Member shall be exercised by the Voting Delegate representing the Service Area of which the Lot is a part.

(b) Class "B". The Class "B" Member shall not have any specific number of votes, but may appoint the Board members during the Class "B" Control Period, as specified in the By-Laws, and may exercise the additional rights specified throughout the Governing Documents. Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to one Class "A" vote for each Lot it owns.

(c) Class "C". Each Class "C" Member shall be entitled to cast the number of votes as set forth in such Member's agreement with the Association; provided, however, that each Class "C" Member shall be entitled to at least one vote. Class "C" Members shall not have the right to vote on any matters except as specifically set forth in the Governing Documents.

### 6.4. Service Areas.

Pursuant to Section 47F-3-110(e) of the Act, Service Area Owners may be permitted to vote on specific issues provided that the issue being voted on is of special interest solely to such Service Area Owners and all except a de minimis cost that will be incurred based upon the vote taken will be assessed solely against the Service Area Owners. Notwithstanding the foregoing, an issue to be voted upon only by Owners of Lots within a Service Area shall not be a special interest solely to such Service Area Owners if the issue being voted on substantially affects the overall appearance of the Community or substantially affects living conditions of Lot Owners not included within the subset of Service Area Owners.

### 6.5. Voting Delegates.

Class "A" Members within each Service Area shall, if determined by the Board, elect a Voting Delegate to be responsible for casting all Class "A" votes attributable to Lots in the Service Area. The Board in its sole discretion shall determine whether Voting Delegates shall be elected for each Service Area; provided, however, that all Service Areas that are of similar sizes or that are similarly situated shall be treated the same. Until such time as the Board first calls for election of a Voting Delegate for any Service Area, the Service Area Owners shall be entitled personally to cast the votes attributable to their respective Lots on any issue requiring a vote under this Declaration, the By-Laws or the Articles.

If the Board determines that Voting Delegates shall be elected, the elections and Voting Delegates shall be subject to the following procedures unless the Governing Documents for such Service Area provide for stricter requirements:



(a) The Board shall send notice of the election of a Voting Delegate to all Service Area Owners; provided, however, that the first election of a Voting Delegate for any Service Area shall not be held until at least 50% of the Lots planned for such Service Area have been conveyed to Persons other than Declarant. After the initial election of a Voting Delegate for a Service Area, subsequent elections shall take place on an annual basis.

(b) Elections may take place by written ballot cast by mail or at a meeting of the Class "A" Members within each Service Area, as the Board determines; provided, however, upon written petition signed by Class "A" Members holding at least 30% of the votes attributable to Lots within any Service Area, the election for such Service Area shall be held at a meeting.

(c) The presence, in person or by proxy, of Class "A" Members representing at least 10% of the total Class "A" votes attributable to Lots in the Service Area (but in no event less than the Owners of three Lots) shall constitute a quorum at any Service Area meeting. Each Class "A" Member who owns a Lot within the Service Area shall be entitled to cast one equal vote per Lot owned.

(d) At each election, the Service Area Owners shall elect a Voting Delegate who shall be responsible for casting all votes attributable to Lots owned by Class "A" Members in the Service Area on all Association matters requiring a membership vote. In addition, each Service Area shall elect an alternate Voting Delegate who shall be responsible for casting such votes in the absence of the Voting Delegate. The candidate who receives the greatest number of votes shall be elected as Voting Delegate and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Delegate. The Voting Delegate and the alternate Voting Delegate shall serve a term of one year and until their successors are elected. No Person shall be eligible to serve as a Voting Delegate or an alternate Voting Delegate if any assessment for such Person's Lot is delinquent. The Voting Delegate and the alternate Voting Delegate may not be Owners, Occupants or representatives of the same Lot.

(e) Any Voting Delegate or alternate Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owners holding at least a Majority of the total Class "A" votes attributable to Lots in the Service Area which the Voting Delegate or alternate Voting Delegate represents. Any Voting Delegate or alternate Voting Delegate shall be automatically removed and ineligible to cast the votes attributable to Lots in such Voting Delegate's Service Area if any assessment for such Voting Delegate's Lot is delinquent. Upon removal of a Voting Delegate or an alternate, a successor shall be elected by the Service Area Owners to fill the vacancy for the remainder of such delegate's term.

(f) Prior to taking a vote on any issue requiring membership approval, the Association shall distribute proxies to all Members represented by Voting Delegates allowing each Member to direct in writing how such Member's vote is to be cast with respect to such issue by the Voting Delegate who represents such Member. The Voting Delegates shall be required to cast all votes for which specific proxies are returned in the manner directed in such proxies. All other votes may be cast as the Voting Delegate deems appropriate in its sole discretion. The Board may adopt resolutions establishing additional procedures for polling Members.

Notwithstanding anything to the contrary above, with respect to any portion of the Community that is subject to the jurisdiction of a Service Area Association, the Voting Delegate and alternate Voting Delegate for such Service Area shall be the president and secretary of the Service Area Association, respectively.

#### 6.6. Voting Groups.

Declarant may designate Voting Groups consisting of one or more Service Areas for the purpose of electing directors to the Board. The designation of Voting Groups, if any, shall be to promote representation on the Board of Directors for various groups having dissimilar interests and to avoid a situation in which the Members from similar Service Areas are able, due to the number of Lots in such Service Areas, to elect the entire Board of Directors, excluding representation of others. Following termination of the Class "B" Control Period, the number of Voting Groups within the Community shall not exceed the total number of directors to be elected by the Class "A" Members pursuant to the By-Laws. The Members within each Voting Group shall be entitled to elect directors from a separate slate of candidates as set forth in the By-Laws.

Declarant shall establish Voting Groups, if at all, not later than the date of termination of the Class "B" Control Period by filing with the Association, and in the Public Records, a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Lots within each Voting Group can easily be determined. Such designation may be unilaterally amended from time to time by Declarant during the Development and Sale Period.

After termination of the Development and Sale Period, the Board shall have the right to file or amend any Supplemental Declaration for the purpose of designating Voting Groups. Neither recordation nor amendment of such Supplemental Declaration shall constitute an amendment to this Declaration, and no consent or approval of any Person shall be required except as stated in this Section. Until such time as Voting Groups are established, all of the Community shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been filed, any and all portions of the Community which are not assigned to a specific Voting Group shall constitute a single Voting Group.

### **Article VII Association Powers and Responsibilities**

#### 7.1. Acceptance and Control of Common Areas.

(a) The Association may acquire, hold, mortgage or otherwise encumber, lease (as landlord or tenant), operate, and dispose of tangible and intangible personal property and real property, subject to the provisions of subsection (b) below. The Association may enter into leases, licenses, or operating agreements, for payment or no payment, as the Board deems appropriate, permitting use of portions of the Common Area by others.

(b) Pursuant to Section 47F-3-112(a) of the Act and notwithstanding anything to the contrary contained herein, the Association may convey or encumber by security interest all or any portion of the Common Area if Members representing at least 80% of the Class "A" votes in the Association and Declarant, during the Development and Sale Period, agree in writing to such action. In addition, Limited Common Area may be conveyed or encumbered with the written consent of Members representing 100% of the Class "A" votes allocated to the Lots to which such Limited Common Area is assigned and Declarant, during the Development and Sale Period. Proceeds of the sale or financing of either Common Area or Limited Common Area shall be disbursed to the Association.

Pursuant to Section 47F-3-112(b) of the Act, the Association, on behalf of the Owners, may contract to convey the Common Area or the Limited Common Area or to subject the same to a security interest, but the contract shall not be enforceable against the Association until approved pursuant to Section 47F-3-112(a) of the Act. Once such approval is obtained, the Association shall have all powers necessary and appropriate to effect the conveyance or encumbrance, free and clear of any interest of any Lot Owner or the Association in or to the Common Area or Limited Common Area conveyed or

encumbered, including the power to execute deeds or other instruments. Any purported conveyance, encumbrance, or other voluntary transfer of Common Area or Limited Common Area, unless made pursuant to this subsection and the Act shall be void. No conveyance or encumbrance of Common Area or Limited Common Area may deprive any Lot of its rights to access and support.

(c) Declarant or its designees may, from time to time, transfer to the Association, and the Association shall accept, personal property and/or fee title or other property interests in any real property (and any improvements which may be located thereon) included within the property described in Exhibit "A" or "B." Upon Declarant's request, the Association shall transfer back to Declarant or its designees, without any payment by Declarant or such designee, any real property which has not been improved by a structure intended for residential occupancy, whether or not such property has been improved by landscaping, decorative walls, signs, irrigation, utilities, or other improvements, if originally conveyed to the Association for no or nominal payment.

(d) The Association is responsible for management, operation, and control of the Common Area, subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Association. The Association may enter into a property management agreement with any Person, including Declarant or any Declarant Affiliate.

(e) Declarant may elect to construct or install certain improvements or facilities upon portions of the Common Area, but is not obligated to do so and may elect to leave portions of the Common Area in their natural unimproved state. Declarant shall not be required to dredge or remove silt from any waterway that may be conveyed to the Association. Declarant shall have the absolute right and power to determine what improvements or facilities, if any, will be located on the Common Area during the Development and Sale Period.

(f) Declarant hereby reserves the right, at all times after conveyance of the Common Area to the Association, to enter the Common Area, without prior notice, and to inspect the condition thereof and the improvements and facilities thereon, if any. If Declarant determines, in its sole judgment, that the Association has failed to maintain any portion of the Common Area in a manner consistent with the Community-Wide Standard, it may so notify the Association, in writing, and the Association shall promptly perform the required maintenance or repairs. Failure of the Association to maintain the Common Area in a manner consistent with the Community-Wide Standard shall relieve Declarant and any predecessor Declarant of any liability to the Association or to any Member for any condition of the Common Area. Declarant shall have the right to make a record of its inspections by any means available, including, but not limited to, photographing and/or videotaping the Common Area, and shall have the right to perform tests or examinations to determine the condition of the Common Area. Notwithstanding the foregoing, Declarant shall have no obligation to perform inspections of the Common Area owned by the Association, and the Association shall not be relieved of its obligation to maintain the Common Area because of the election of Declarant or any predecessor Declarant to inspect or not to inspect or report to the Association the condition of the Common Area.

## 7.2. Maintenance of Common Maintenance Areas.

The Association shall maintain the Common Maintenance Areas in accordance with the Community-Wide Standard. The Common Maintenance Areas shall include, but are not limited to (a) the Common Area, including landscaping, lighting, structures, hiking trails and bridges, signage, any outdoor pavilion or facilities, any entry feature or greeter's cottage, any Roadways, any shared driveways and other improvements located on the Common Area; (b) landscaping within public rights-of-way within or abutting the Community, if not the obligation of owners; (c) the community well and water storage and distribution system including any water line(s) extended from the well(s) to the boundary of a Lot; (d) such portions of Lots as are specifically identified as the Association's responsibility under any

Supplemental Declaration; (e) such portions of any additional property as may be dictated by Declarant, this Declaration, any Supplemental Declaration, any Plat, or any contract, covenant, or agreement for maintenance entered into by, or for the benefit of, the Association; and (f) all ponds, ditches, culverts, and/or Wetlands located within the Community that serve as part of the surface water and storm water management system, other than those portions located on a Lot and to be maintained by the Owner of such Lot in accordance with Section 5.1 including, without limitation, associated improvements and equipment, but not including any such areas, improvements, or equipment maintained by the County or any other governmental or quasi-governmental body.

The Association shall provide snow removal on the Roadways and any shared driveways so as to provide, in a reasonable manner, year-round access within the Community to Lots and to any Private Amenity. In addition, snow removal may also be provided to certain Lots or Service Areas pursuant to Sections 7.7 and 7.11.

The Association may maintain other property that it does not own, including, without limitation, property dedicated to the public and property located outside the perimeter boundaries of the Community, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and the owner of such other property consents. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own, except to the extent that it has been grossly negligent in performing its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Common Maintenance Areas in continuous operation, except for any periods necessary, as the Board may determine in its discretion, to perform required maintenance, repairs, or replacement, unless Members representing at least 75% of the Class "A" votes agree in writing to discontinue such operation (which may include closing and/or demolishing such facilities or equipment). Notwithstanding the above, the Common Maintenance Areas may not be reduced, nor shall operation of its facilities and equipment be discontinued, without Declarant's prior written approval during the Development and Sale Period. If the Association fails to properly perform its maintenance responsibilities hereunder and/or to comply with the Community-Wide Standard, Declarant may, following 10 days' notice, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (a) such maintenance responsibility is otherwise assumed by or assigned to an Owner, a Service Area Association, or the owner or operator of a Private Amenity; or (b) such property is dedicated to any Governmental Authority; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Unless otherwise provided in this Declaration or any applicable Supplemental Declaration, the costs associated with maintenance, repair, and replacement of the Common Maintenance Areas shall be a Common Expense, except that such costs associated with Limited Common Areas shall be a Limited Common Expense. However, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Maintenance Areas pursuant to this Declaration, a Supplemental Declaration, or other recorded covenants or agreements.

Unless Declarant expressly agrees in writing with the Association to pay the costs of maintaining any portion of the Common Maintenance Areas, Declarant shall have no such obligation, regardless of any inferences which may be drawn from promotional or other materials.

### 7.3. Insurance.

The Association shall keep all improvements, facilities, and fixtures located within the Common Areas insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with reasonable deductibles and normal exclusions for land, foundations, excavation costs and similar matters) and may obtain insurance against such other hazards and casualties as the Association may deem desirable.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect such types of insurance as set forth in Section 47F-3-113 of the Act, which shall include provisions required by Section 47F-3-113(c) of the Act, including the following types of insurance, as deemed necessary or advisable in the Board's business judgment and as may be reasonably available: (i) blanket property insurance covering all insurable improvements within the Common Areas to the extent that the Association has responsibility for repair or reconstruction in the event of a casualty, or assumes such responsibility pursuant to Section 5.2, regardless of ownership, with full replacement value coverage; (ii) commercial general liability insurance on the Common Maintenance Areas insuring against liability for bodily injury, death, and property damage arising from the activities of the Association or with regards to Common Maintenance Areas, including, without limitation, if obtainable, a cross liability endorsement insuring each Member and Declarant against liability to each other Member and the Association and vice versa; (iii) directors and officers liability coverage; (iv) commercial crime insurance, including fidelity insurance, covering all Persons responsible for handling Association funds in an amount at least equal to three months of Regular Assessments, plus all reserve funds; (v) to the extent any insurable improvements to Common Maintenance Areas are within an "A" flood zone, flood insurance in an amount equal to the lesser of 100% of the replacement costs of all insurable improvements (if any) within the Common Maintenance Areas or the maximum amount of coverage available under the National Flood Insurance Program; and (vi) such additional insurance as the Board, in its business judgment, determines advisable. All such policies shall list Declarant as an additional insured during the Development and Sale Period. Notwithstanding the foregoing, Declarant may obtain insurance for multiple communities which it is developing and/or other projects under a blanket policy instead of obtaining a separate policy for the Association, and charge a reasonable portion of the cost thereof to the Association.

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Service Area, obtain and maintain property insurance on the insurable improvements within such Service Area. Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Lot insured.

Unless designated as a Limited Common Area or otherwise provided in a Supplemental Declaration, premiums for Common Maintenance Area insurance shall be a Common Expense.

(b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of its insurance coverage by one or more qualified Persons. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

To the extent obtainable at reasonable rates, the insurance policy(ies) maintained by the Association may contain provisions, or be accompanied by endorsements, for agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction. All insurance policies shall contain standard mortgagee clauses, if applicable.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or Limited Common

Expense in the same manner as the premiums for the applicable insurance coverage subject to the provisions of Section 7.4.

(c) Waiver of Subrogation. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Members, Declarant, any predecessor Declarant, and the directors, trustees, officers, shareholders, attorneys, agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said Persons, but only to the extent that insurance proceeds are received in compensation for such loss.

(d) Restoring Damaged Improvements. In the event of any loss covered by insurance held by the Association, only the Board or its duly authorized agent may file and adjust all insurance claims. The Board shall obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless Members representing at least 80% of the total Class "A" votes in the Association, if general Common Area, or 80% of the Class "A" votes of Lots to which the Limited Common Area is assigned, if Limited Common Area, and Declarant during the Development and Sale Period, decide, within 90 days after the loss, not to repair or reconstruct. If such damage affects the greeter's cottage, community well and water storage and distribution system, or any other property subject to a Cost Sharing Agreement and maintained by the Association, then the Association shall also obtain the approval of Class "C" Members holding at least 67% of the total Class "C" votes in the Association of any decision not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 90-day period, then the period may be extended until 90 days after such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed (unless required by FNMA, HUD or VA).

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall deposit any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed-upon settlement, in a capital improvements account for the benefit of the Members. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

#### 7.4. Responsibility and Assessment for Damages.

(a) If an Owner is legally responsible for damage inflicted on any Common Area, the Association may direct such Owner to repair such damage or the Association may itself cause the repairs to be made and to recover the reasonable cost of such repairs and any other damages from the responsible Owner through a Benefited Assessment pursuant to Section 8.4.

(b) If damage is inflicted on any Lot by an agent of the Association in the scope of the agent's activities as such agent, the Association is liable to repair such damage or to reimburse the Owner for the reasonable cost of repairing such damage.

(c) When a claim under either subsection (a) or (b) is less than or equal to the jurisdictional amount established for small claims by North Carolina General Statutes Section 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the Board to determine if an Owner is responsible for damages to any Common Area or the Association is responsible for damages to any Lot. If the Board fails to appoint an adjudicatory panel to hear such matters, hearings under this Section shall be held before the Board. Such panel shall accord to the party charged with causing damages notice of the charge, an opportunity to be heard and to present evidence, and notice of the decision. This panel may assess liability for each damage incident against each Owner charged or against the Association not in excess of the jurisdictional amount established for small claims by North Carolina General Statutes Section 7A-210. When the claim under either subsection (a) or (b) exceeds the jurisdictional amount established for small claims by North Carolina General Statutes Section 7A-210, liability of any Owner charged or the Association shall be determined as otherwise provided by law. Liabilities of Owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by a lien under Section 47F-3-116 of the Act and Section 8.4 of this Declaration. Liabilities of the Association determined by adjudicatory hearing or as otherwise provided by law may be offset by the Owner against sums owing to the Association, and if so offset, shall reduce the amount of any lien of the Association against the Lot at issue.

#### 7.5. Enforcement.

(a) The Association, acting through the Board, may impose sanctions for violation of the Governing Documents, subject to the notice and hearing procedures set forth in the By-Laws, as applicable. Such sanctions may include, without limitation:

(i) imposing monetary fines, up to the maximum, if any, permitted by the Act, which may accrue from the date of notice and which shall constitute a lien upon the violator's Lot;

(ii) suspending the vote attributable to the violating Owner's Lot if permitted and then in accordance with applicable law;

(iii) suspending the right of the violator and any Occupant of the violator's Lot to use any recreational facilities within the Common Maintenance Area;

(iv) suspending any services which the Association provides to an Owner or the Owner's Lot if the Owner is delinquent in paying any assessment or other charge owed to the Association for longer than 30 days;

(v) recording notices in the County land records describing any violation of the Governing Documents; and/or

(vi) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV, the Architectural Guidelines and/or any other Governing Document from continuing or performing any further activities in the Community.

(b) In addition, but without limitation of the Association's other rights and remedies, the Association, acting through the Board or its designee, may take the following action to enforce the Governing Documents without, to the extent permitted by applicable law, the necessity of compliance with the notice and hearing procedures set forth in the By-Laws:

(i) requiring an Owner, at its own expense, to perform maintenance on such Owner's Lot, to complete or cure any construction or modification approved pursuant to Article IV, or to remove any structure, item or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition;

(ii) entering the property pursuant to the easement granted in Section 11.6 and exercising self-help to remove or cure a violating condition, or to complete any construction or modification approved pursuant to Article IV which was begun and not completed within the required time period, upon failure of an Owner to take action as required pursuant to subsection (i) above within 10 days after the Board's mailing of written notice to do so, and any such entry shall not be deemed a trespass;

(iii) exercising self-help in any situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(iv) levying Benefited Assessments pursuant to Section 8.4 to cover costs which the Association incurs to bring a Lot into compliance with the Governing Documents, including Legal Costs, or costs incurred as a consequence of the conduct of an Owner or Occupant of a Lot; and/or

(v) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Article XV, if applicable.

(c) In the event that any Occupant of a Lot violates the Governing Documents, the Board may sanction such Occupant and/or the Owner of the Lot. If a fine is imposed, the fine may first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents whether brought by the Association, Declarant, or Owner, the prevailing party shall be entitled to recover all Legal Costs incurred in any such action.

(e) The Association's decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, considering, among other things, hardship, expense, or other reasonable criteria, to pursue enforcement action.



Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under the same or other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

(f) The Association, by contract or other agreement, may enforce applicable governmental regulations and permit a Governmental Authority to enforce ordinances, rules, statutes, or laws within the Community for the benefit of the Association and its Members.

(g) Declarant shall be entitled to exercise all of the rights and powers granted to the Association under Sections 7.5(a), 7.5(b), 7.5(c), and 7.5(d) and shall be entitled to recover all costs that it incurs in so doing from the responsible Owner.

(h) Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity and may be instituted as provided in the Governing Documents by Declarant, its successors and assigns, the Association, its successors or assigns, or any Owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner or Declarant to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter. Further, the Association shall have the right of self-help to cure any violations that remain uncured after any required notice is given.

#### 7.6. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly or by reasonable implication from the Governing Documents, and may take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all of the Association's rights and powers may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Maintenance Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation on behalf of or in the name of the Association or the Members. In exercising the Association's rights and powers, making decisions on the Association's behalf, including, without limitation, deciding whether to file a lawsuit under any circumstances, and conducting the Association's affairs, Board members and the Association's officers are subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

#### 7.7. Provision of Services to Lots.

The Association may provide, or provide for, services, utilities, and facilities for all or any of the Members and their Lots, and may enter into contracts or agreements with other entities, including, without limitation, Declarant and/or Declarant's Affiliates, to provide such services, utilities, and facilities. The Board may charge use or service fees for any such services, utilities, and facilities, or may include the costs in the Association's budget as a Common Expense and assess it as part of the Regular Assessment, if provided to, or determined by the Board to be a benefit to, all Lots. Alternatively, the Board may include the costs in a Service Area budget as a Limited Common Expense if provided to, or determined by the Board to be a benefit to the Lots within a particular Service Area. The Association may also arrange for the costs of such services, utilities, and facilities to be billed directly to Owners by the provider(s) of such services. By way of example, such services, utilities, and facilities might include

shared driveway maintenance, landscape maintenance, snow removal, pest control service, cable or satellite television service, telephone, internet access, security monitoring, caretaker, transportation, fire protection, well, water, septic and other utilities, trash collection and recycling, and other services and facilities.

Nothing in this Section shall be construed as a representation by Declarant, any Declarant Affiliate, or the Association as to what, if any, services, utilities or facilities shall be provided. In addition, subject to the contract terms, the Board may modify or cancel existing contracts for services in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services, utilities, or facilities provided to Owners or Lots as a Common Expense or a Limited Common Expense, shall not exempt any Owner from the obligation to pay assessments for such services, utilities or facilities.

7.8. Relationships with Other Properties.

The Association may enter into Cost Sharing Agreements with the owners and/or operators of any neighboring properties or any properties within the Community, including, but not limited to, the owners and/or operators of any Private Amenity to share expenses for, among other things, shared or mutually beneficial property or services and/or a higher level of maintenance of Common Maintenance Areas. Such agreements may establish rules and regulations regarding the use of any shared or mutually beneficial property or services. If the Association is obligated to make payments under a Cost Sharing Agreement, such payments shall be deemed to be Common Expenses of the Association unless set forth otherwise in the Cost Sharing Agreement.

7.9. Relationship with Governmental and Tax-Exempt Organizations.

The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments, public or private utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Association, and the Members. The Association may contribute money, real property (including, without limitation, Common Area), personal property, or services to any such entity. Any such contribution may be a Common Expense and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

7.10. Right To Designate Sites for Governmental and Public Interests.

During the Development and Sale Period, Declarant may, but is not obligated to, designate sites within the Community for government, education, or religious activities and interests, including, without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. The sites may include Common Area, in which case the Association shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

7.11. Provision of Services to Service Areas.

(a) Declarant, on Exhibit "A" to this Declaration and/or by Supplemental Declaration, may assign the submitted property to one or more Service Areas (by name or other identifying designation) as

Declarant deems appropriate, in Declarant's discretion, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to the Lots within such Service Area in addition to those which the Association generally provides to all Lots. Until termination of the Development and Sale Period, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to designate or redesignate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area shall be assessed against the Lots within the Service Area as a Service Area Assessment.

(b) In addition to Service Areas which Declarant may designate, the Owner(s) of any two or more Lots may petition the Board to designate such Lots as a Service Area for the purpose of receiving from the Association (a) special benefits or services which are not provided to all Lots, or (b) a higher level of service than the Association otherwise provides. The Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the charge to be made therefore, which may include a reasonable administrative charge in such amount as the Board deems appropriate in its discretion (provided, any such administrative charge shall apply at a uniform rate per Lot among all Service Areas receiving the same service). Upon written approval of the proposal by the Owners of the Lots within the proposed Service Area, and Declarant during the Development and Sale Period, the Association shall provide the requested benefits or services on the terms set forth in the proposal. The cost and administrative charges associated with such benefits or services shall be assessed against the Lots within such Service Area as a Service Area Assessment, subject to the right of the Service Area Owners to veto the budget for their Service Area as provided in Section 8.1.

(c) The Board may, by resolution, designate a group of Lots as a Service Area and levy Service Area Assessments against such Lots to fund the costs of operating, maintaining, repairing, replacing and/or insuring certain portions of the Common Maintenance Area within or adjacent to such Service Area. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and greenspace between the Service Area and adjacent Roadways, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; however, all similarly situated Lots shall be treated the same. Any such designation shall require the consent of Declarant during the Development and Sale Period.

#### 7.12. Powers of the Association Relating to Service Area Associations.

With respect to any Service Area governed by a Service Area Association, the Association may veto any action taken or contemplated by such Service Area Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also may require specific action to be taken by any Service Area Association to fulfill its obligations and responsibilities under any Governing Document. For example, the Association may require that specific maintenance or repairs or aesthetic changes be performed by the Service Area Association. If the Service Area Association fails to comply with such requirements within a reasonable time as specified in writing by the Association, the Association may effect such action on behalf of the Service Area Association and assess the Lots within such Service Area for any expenses incurred by the Association in taking such action. Such assessments may be collected as a Benefited Assessment.

#### 7.13. Responsibilities Under Governmental Permits.

Declarant shall have the absolute and unconditional right in its sole discretion to assign, delegate, or otherwise transfer to the Association any of its continuing obligations and/or responsibilities under governmental permits and approvals with respect to the Community. The Association shall accept and

assume such obligations and responsibilities without condition or consideration. Such assignment, delegation, or transfer and assumption shall be effective without the consent of, or any further action by the Association, but upon Declarant's request, the Association shall promptly execute any documents which Declarant requests to evidence the assignment, delegation, or transfer and assumption of such obligations and/or responsibilities. The Association shall comply in all respects with the terms of, and shall not undertake any activity inconsistent with, such permits and approvals. The Association shall indemnify, defend and hold Declarant harmless from any claims or losses arising out of the violation or failure to comply with any permit(s), or out of the operation, maintenance or use of any improvement or facility authorized by the permit(s), provided such claim or loss first occurs after the effective date of the assignment, delegation, transfer (or tender of the assignment, delegation, or transfer, if wrongfully refused by an Association).

#### 7.14. Waterways and Use.

With respect to any waterways now existing or which may hereafter be contained within the Community, no Owner shall have the right to pump or otherwise remove any water from such waterways for the purposes of irrigation or other use or to place any matter or object in such waterways unless consented to by Declarant and if permitted by the applicable Governmental Authorities. Water flow and channels may change from time to time as a result of climatic conditions. Stream flows may not be altered or diverted by any Owner or Occupant without the prior written consent of the ARB and the applicable Governmental Authorities.

#### 7.15. Management Companies and Management Agreements.

The Association shall engage a management company at all times, and the management company shall provide the services outlined in Exhibit "D" attached hereto. This provision may be amended only if approved by (a) the unanimous consent of the Board; (b) Class "A" Members representing 80% of the votes present in person or by proxy at a duly called meeting of the Owners at which a quorum is present; and (c) during the Development and Sale Period, Declarant.

### Article VIII Association Finances

#### 8.1. Budgeting and Allocating Expenses.

(a) Calculation of Regular Assessments. Before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses which it expects to incur for the coming year, including any contributions to be made to reserves pursuant to Section 8.2 for periodic major maintenance, repair and replacement of items that the Association maintains as a Common Expense. The budget shall separately reflect the anticipated sources and estimated amounts of funds to cover the Common Expenses, including any surplus or deficit to be applied from prior years, assessment income, any fees charged for use of recreational amenities, and any other non-assessment income.

The Association is authorized to levy Regular Assessments to fund the Common Expenses against all Lots subject to assessment under Section 8.5, in the proportions described in Section 8.5. In determining the Regular Assessment rate, the Board may consider any assessment income expected to be generated from any property anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Regular Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.6(b)) which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The

payment of such subsidy in any year shall not obligate Declarant to continue paying a subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board may revise the budget and adjust the Regular Assessment from time to time during the year, subject to the notice requirements set forth above and applicable law.

(b) Calculation of Service Area Assessments. Before the beginning of each fiscal year, the Board shall prepare a separate budget for each Service Area of the estimated Limited Common Expenses which it expects to incur on behalf of such Service Area for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.2 for periodic major maintenance, repair and replacement of items that the Association maintains on behalf of the Service Area as a Limited Common Expense. Each budget shall include, as a separate line item in the operating expense portion of the budget, the estimated cost of routine maintenance and repair of any Roadways or shared driveways which the Association maintains on behalf of such Service Area as a Limited Common Expense, and as a separate line item in the reserve portion of the budget, a contribution to a reserve fund for periodic major maintenance, repair and repaving of such Roadways and shared driveways. The budget shall separately reflect the anticipated sources and estimated amounts of funds to cover the Limited Common Expenses, including any surplus or deficit to be applied from prior years, assessment income, any fees charged for use of recreational amenities maintained on behalf of the Service Area, and any other non-assessment income.

The Association is authorized to levy Service Area Assessments, to fund the Limited Common Expenses for each Service Area, against all Lots in the Service Area that are subject to assessment under Section 8.5, in the proportions described in Section 8.5, except that, unless otherwise specified in the applicable Supplemental Declaration, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures, may be levied on each of the benefited Lots in proportion to the benefit received, as the Board may reasonably determine. In determining the Service Area Assessment rate for any Service Area, the Board may consider any assessment income expected to be generated from any property in the Service Area anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Service Area Assessment applicable to any Service Area for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.6(b)) which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue paying a subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

All amounts that the Association collects as Service Area Assessments shall be expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

(c) Budget Ratification and Notice. In accordance with Section 47F-3-103(c) of the Act, within 30 days after adoption of any proposed budget, the Board shall provide to all Owners of Lots subject to such budget a summary of the budget and notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget shall be ratified unless, at such meeting, Members representing 75% of the total Class "A" votes allocated to Lots subject to such budget, and Declarant

during the Development and Sale Period, reject the budget. In the event the proposed budget is rejected, or if the Board fails for any reason to determine the budget for any year, then the periodic budget last ratified, or deemed ratified, by the Owners shall be continued until such time as the Owners ratify or are deemed to have ratified a subsequent budget proposed by the Board.

#### 8.2. Budgeting for Reserves.

The Board shall prepare and periodically review separate reserve budgets for the Common Maintenance Area, and for each Service Area for which the Association maintains capital items as a Limited Common Expense, which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of capital items under each budget. The Board shall include in the budgets adopted and ratified pursuant to Section 8.1(c), a capital contribution to fund reserves in an amount which the Board, in the exercise of its business judgment, deems sufficient to meet the projected needs under each budget with respect to both amount and timing by annual contributions over the budget period.

Reserve funds shall be held in a separate account or accounts from the operating and other funds of the Association. Reserve funds collected for each Service Area shall be segregated from reserves collected for Common Maintenance Areas or other Service Areas.

The reserve funds held in each account may be expended only for major maintenance, repair, or replacement of those assets covered by the reserve budget pursuant to which they were collected. Subject to such limitation, the Board may adopt resolutions regarding the expenditure of any reserve funds including, without limitation, policies designating the nature of assets for which reserve funds may be expended. Neither the Association membership nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent during the Development and Sale Period.

#### 8.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Lots within any Service Area, if such Special Assessment is for Limited Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of a majority of the Board, and the affirmative vote or written consent of Declarant, during the Development and Sale Period. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

#### 8.4. Benefited Assessments.

The Association may levy Benefited Assessments against one or more particular Lots as follows:

(a) to cover the costs, including, without limitation, overhead and administrative costs, of providing services to a Lot pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 7.7 or Section 8.11) or pursuant to a Supplemental Declaration. Benefited Assessments for special services may be levied in advance of the provision of the service; and

(b) to cover costs incurred in bringing a Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot, including, without limitation, Legal Costs, subject to Section 7.5, as applicable.

In addition, fines levied by the Association pursuant to Section 7.5 shall constitute Benefited Assessments.

The Association may also levy a Benefited Assessment against the Lots within any Service Area to reimburse the Association for costs incurred in bringing the Service Area into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules; provided, however, the Board shall give prior written notice to the Service Area Owners and an opportunity for such Owners to be heard before levying any such assessment.

8.5. Assessment Rate; Commencement of Assessments; Time of Payment.

The obligation to pay assessments commences as to each Lot on the date that the Lot is conveyed to a Person other than Declarant or any Declarant Affiliate or the first day of the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. Regular and Special Assessments for Common Expenses shall be allocated equally among all Lots subject to assessment. Except as otherwise provided in Section 8.1(b) or in any applicable Supplemental Declaration, Service Area Assessments shall be allocated equally among all Lots subject to assessment in the benefited Service Area. The first annual Regular Assessment and Service Area Assessment, if any, levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot.

Owners shall pay assessments in the manner and on the dates the Board establishes. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and may impose special requirements for Owners who have failed to pay, on a timely basis, two or more payments in any 12 month period, of any nature, due under the Governing Documents. If the Board so elects, assessments may be paid in quarterly or monthly installments. Unless the Board otherwise provides, the entire Regular Assessment and Service Area Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on such Owner's Lot, the Board may require that the outstanding balance on all assessments be paid in full immediately.

8.6. Obligation for Assessments.

(a) Owners. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Lot, covenants and agrees to pay all assessments levied in accordance with the Governing Documents for each Lot owned. All assessments, together with interest (computed from the assessment's due date at a rate of 18% per annum or the maximum rate permitted by law, whichever is less), late charges as determined by Board resolution, and Legal Costs, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

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

No Owner is exempted from liability for assessments by non-use of Common Maintenance Area, abandonment of such Owner's Lot, or any other means. The obligation to pay assessments is a separate and independent covenant by each Owner. No reduction or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform

some required function, or for inconvenience or discomfort arising from making repairs or improvements, or for any other reason.

Pursuant to Section 47F-3-118(b) of the Act, the Association shall, upon written request, furnish to any Owner liable for any type of assessment, or the Owner's authorized agents, a written statement signed by an Association officer setting forth the amount of unpaid assessments and other charges against the Lot. Such statement shall be furnished within 10 business days after receipt of the request and shall be binding on the Association, the Board, and every Owner. Except in circumstances where the written request pertains to unpaid assessments or other charges, the Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

(b) Declarant. Notwithstanding anything to the contrary contained in this Declaration, to the extent permitted by applicable law, during the Class "B" Control Period, Declarant shall annually elect either (a) to pay an amount equal to the assessments on all of its unsold Lots, notwithstanding the commencement date set forth in Section 8.5; or (b) to fund the budget deficit. The budget deficit for any fiscal year shall be the difference between (i) the amount of assessments, including but not limited to Initial Assessments and transfer fees, levied on Class "A" Member-owned Lots, plus any other income received during the fiscal year including but not limited to any payments received by the Association pursuant to a Cost Sharing Agreement or any Declarant subsidy as described in Section 8.1; and (ii) the amount of the Association's actual expenditures during the fiscal year, excluding contributions to reserves and excluding Special Assessments arising as a result of any unusual loss or liability. Unless Declarant otherwise notifies the Board in writing at least 30 days before the beginning of the fiscal year, Declarant shall continue paying on the same basis as during the previous fiscal year. Declarant's obligation may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these, the value of which shall be reasonably determined by Declarant. After termination of the Class "B" Control Period, Declarant shall pay assessments on Lots which it or its Affiliates own in the same manner as any other Owner.

(c) Declarant's Right to Loan or Advance Funds. Declarant may (but is not obligated to) loan, advance or otherwise make payments to the Association to assist the Association in meeting its financial obligations. Notwithstanding anything to the contrary contained in this Article VIII, if Declarant loans, advances or otherwise pays assessments (in excess of any obligation set forth in subsection (b) above), then any such sums shall be repaid to Declarant prior to the termination of the Class "B" Control Period.

#### 8.7. Lien for Assessments.

The Association may record a lien against any Lot to secure payment of assessments that remain unpaid for a period of 30 days or longer after becoming due. For purposes of this Section, assessments shall include interest, late charges (subject to North Carolina law), and Legal Costs. Such lien shall be superior to all other liens, except (a) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, and (b) other liens or encumbrances which by law would be superior. The Association's lien may be enforced by suit, judgment, and/or foreclosed in like manner as a mortgage on real estate under power of sale under Chapter 45 of the North Carolina General Statutes, unless prohibited by applicable law.

Notwithstanding the above, and subject to applicable law, the Board may designate assessments or charges levied solely for the purpose of funding Common Expenses related to acquisition, development, or construction of infrastructure or capital improvements serving the Community (or to pay the cost to underwrite, service, and repay any debt incurred to finance any such acquisition, development, or construction) as a "Capital Improvement Assessment," and the lien therefore shall be superior to (a)



the Association's lien for other Common Expenses and Limited Common Expenses, and (b) all other liens except those deemed superior under federal or North Carolina law and which may not be made subordinate by this provision.

At a foreclosure sale, the Association may bid for the Lot and acquire, hold, lease, mortgage, and convey the Lot. The Association may sue for unpaid assessments and other charges without foreclosing or waiving its assessment lien.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee (or pursuant to a deed in lieu of foreclosure to a first Mortgagee) extinguishes the lien relating to any amounts due prior to the Mortgagee's foreclosure or the deed in lieu of foreclosure. The purchaser of such foreclosed Lot shall not be personally liable for assessments on such Lot due prior to the foreclosure sale. Such unpaid assessments shall be a Common Expense collectible from Owners of all Lots subject to assessment under Section 8.5, including, without limitation, such purchaser, its successors and assigns.

In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and owner of the obligation secured by this Declaration. The registered agent of the Association shall be the trustee for all purposes of the foreclosure proceeding, and the Association shall have the power to appoint a substitute trustee if for any reason the Association desires to replace the trustee, and the substitute trustee shall succeed to all rights, powers, and duties thereof. The Association shall request the trustee to sell the Lot, subject to the lien at public auction for cash, after having first given such notice and advertising the time and place of such sale in such manner as may then be provided by law for mortgages and deeds of trust, and upon such sale and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey to the purchaser in as full and ample manner as authorized by Chapter 45 of the North Carolina General Statutes. The trustee shall be authorized to retain an attorney to represent such trustee in such proceedings. The proceeds of the sale shall, after the trustee retains its commission, together with any additional Legal Costs incurred by the trustee, be applied to the costs of the sale, including, but not limited to, costs of collection, taxes, assessments, costs of recording, service fees, and incidental expenditures, the amount due on any note secured by the Lot, and any advancements made by the Association in the protection of the security.

Notwithstanding the above, while the Association owns a Lot: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association.

#### 8.8. Exempt Property.

The following property shall be exempt from payment of Regular Assessments, Service Area Assessments, and Special Assessments:

- (a) All Common Area and other portions of the Community which are not Lots; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

#### 8.9. Initial One-Time Assessment.

The Association hereby establishes an initial one-time assessment (the "Initial Assessment") applicable to each Lot in such amount as determined in the Board's discretion, not to exceed 100% of the

full Regular Assessment per Lot levied for the year in which the Initial Assessment is due and payable. The Initial Assessment shall become due and payable upon the closing of the purchase and sale of the first conveyance of the Lot from Declarant or any Declarant Affiliate. Such Initial Assessment may be used to fund the Association's initial start up costs and other operating expenses or to help fund reserves, in the Board's discretion. The Initial Assessment may be referred to by another name, such as Working Capital Contribution, Working Fund Contribution or some other name, in marketing and disclosure materials.

No further Initial Assessment shall be due for any subsequent transfer of ownership of any Lot from one Class "A" Member to a successor Class "A" Member.

#### 8.10. Transfer Fee.

Excluding the sale of any Lot from or to Declarant or any Declarant Affiliate but including all other sales of Lots, a transfer fee shall be collected at the closing of a transfer of a Lot from the purchaser of each Lot equal to one-fourth of one percent (0.25%) of the total purchase price of such Lot, which transfer fee shall be paid to the Association. This amount shall be collected and disbursed to the Association at the closing of the purchase and sale of each Lot. Such funds may be used by Association in its sole discretion. In the event of non-payment of such transfer fee, the amount due shall bear interest and shall be collectible as an assessment as set forth in this Article. The Association may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sale price, such as executed closing statements, contracts of sale, copies of deed, or other such evidence.

#### 8.11. Use and Consumption Fees; Licenses and Royalties.

The Board may charge use and consumption fees to any Person using Association services, utilities, or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners). Any such fees charged to Owners shall be considered a Benefited Assessment against the Lots of such Owners under Section 8.4(a).

As set forth in Section 10.7, the Association may enter into license agreements with Declarant or other parties to permit the Association's use of trade names or service marks (e.g., use of the name "Bear Lake Reserve"). To the extent permitted by such license agreements, the Board may enter into sub-license agreements, under negotiated terms, which permit others within the Community to use such trade names and/or service marks. The Association may charge fees and collect royalties in connection with such sub-license agreements; provided, Declarant and any Declarant Affiliate shall retain the absolute right to use such trade names and service marks without payment of any license fees. Any such fees and royalties shall be considered a Benefited Assessment under Section 8.4(a).

### Article IX      **Expansion of the Community**

#### 9.1. Annexation by Declarant.

Declarant may, from time to time, subject to this Declaration all or any portion of the property described in Exhibit "B" by recording a Supplemental Declaration describing the property being subjected. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to annex property pursuant to this Section expires when all property described in Exhibit "B" has been subjected to this Declaration or 15 years after this Declaration is recorded, whichever is earlier. Until then, Declarant may transfer or assign this right, in whole or in part, to any

Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be memorialized in a recorded instrument executed by Declarant.

Nothing in this Declaration shall require Declarant, or any successor or assign, to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

Declarant intends to develop the Community in accordance with the Development Plan, but hereby reserves the right to modify the Development Plan and any Plat from time to time in its discretion and at its option. Declarant shall not be required to follow any predetermined order of improvement and development within the Plat or Community; and it may annex additional lands and develop them before completing the development of the Community.

9.2. Annexation by the Association.

The Association also may annex property to the provisions of this Declaration by recording a Supplemental Declaration describing the additional property. Annexation by the Association shall require the affirmative vote or written consent of Members representing more than 50% of the Class "A" votes and the consent of the property owner. In addition, during the Development and Sale Period, Declarant's written consent is required. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is required.

In the event that either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs insures or guarantees any Mortgage encumbering a Lot, and the regulations or procedures of such agency require under such circumstances approval of annexations by such agency or determination by such agency that such annexation is consistent with the general plan of development for the Community, then such approval or determination shall be a prerequisite to such annexation.

9.3. Additional Covenants and Easements.

By Supplemental Declaration, Declarant may impose additional covenants, restrictions and easements on portions of the Community, including, without limitation, covenants obligating the Association to maintain and insure specific property and authorizing the Association to recover its costs through Benefited Assessments or through Service Area Assessments. If someone other than Declarant owns the property, then such owner's consent and execution of the Supplemental Declaration is required. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon recording. Unless otherwise specified in the Supplemental Declaration, the Lots subjected to this Declaration by such Supplemental Declaration shall have equal voting rights in the Association and equal pro rata liability for Regular Assessments with all other Lots.

**Article X      Additional Rights Reserved to Declarant**

10.1. Withdrawal of Property.

Declarant reserves the right to amend this Declaration, until termination of the Development and

Sale Period, to remove from the coverage of this Declaration any property which has not been improved by a structure intended for occupancy, whether or not such property has been improved by landscaping, decorative walls, signs, irrigation, utilities, or other improvements. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not Declarant. Except as provided in Section 7.1(c), if the property is Common Area, the Association's consent is required for such withdrawal.

#### 10.2. Marketing and Sales Activities.

Notwithstanding anything in the Governing Documents to the contrary, Declarant, its Affiliates, and their assigns and builders authorized by Declarant, may construct, maintain, and operate upon portions of the Common Area and property they own, such facilities, activities, and things as, Declarant, in its discretion, may deem to be required, convenient, or incidental to the construction or sale of Lots in the Community and in any other Community developed by Declarant. Such permitted facilities, activities, and things shall include, without limitation, business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. Owners may be excluded from use of all or any portion of such facilities in Declarant's sole discretion. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant, Declarant's Affiliates, and their assigns, and authorized builders may park vehicles in areas other than garages or driveways, including, without limitation, on Roadways and shared driveways.

#### 10.3. Right to Develop.

Declarant and its Affiliates, and their respective employees, agents, and designees, shall have a right of access and use, and an easement over, upon, and under, all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area, the Exhibit "A" property and the Exhibit "B" property, as Declarant deems appropriate in Declarant's discretion.

Each Owner acknowledges that the development of the Community may extend over a number of years, and agrees and consents to all changes in (a) uses or density of Lots or dwellings within the Community, and/or (b) the Development Plan.

Notwithstanding anything contained in any written letter, document or materials, or oral statement received by any Owner, each Owner acknowledges and agrees that the present plans and themes for the Community's development may change and that such Owner has not relied on any representation, warranty, or assurance by any Person (a) that any Lots, or other property or facilities, will be added, modified, or eliminated within the Community; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to the current or future: (a) design, construction, completion, development, use, benefits, or value of property within the Community; (b) number, types, sizes, prices, or designs of any residential or non-residential structures or improvements built or to be built in any part of the Community; or (c) use or development of any property adjacent to or within the vicinity of the Community.

#### 10.4. Right to Approve Changes in the Community Standards.

No amendment to or modification of any Use Restrictions, rules, or the Architectural Guidelines during the Development and Sale Period shall be effective without prior notice to and the written approval of Declarant.

#### 10.5. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's rights and obligations set forth in this Declaration or the By-Laws may, except to the extent restricted by applicable law, be transferred, in whole or in part, from time to time, to other Persons. No such transfer or assignment shall be effective unless it is in a recorded instrument signed by Declarant. Declarant may allow other Persons to exercise, on a one-time or limited basis, any Declarant right without transferring the entire right. In such case, a recorded instrument is not required.

#### 10.6. Community Systems and Services.

Declarant reserves for itself, its successors and assignees, and grants to the Association (after the termination of the Development and Sale Period or at such earlier time as Declarant elects in writing) the exclusive and perpetual right to provide and operate, or to permit others to provide and operate, within the Community, such telecommunication systems (including, without limitation, satellite television, community intranet, internet, and other systems for receiving, distributing, and transmitting electronic data, signals, and audio or visual communications), security systems and services, utilities (including the community well and water storage and distribution system), shared septic systems and shared septic drain fields, trash collection, and other systems and services, including, without limitation, conduits, wires, amplifiers, towers, antennae, and other apparatus and equipment for the operation or provision thereof (collectively, the "Community Systems and Services") as Declarant, in its discretion, deems appropriate. Such right shall include, without limitation, the right to select and contract with companies licensed, if applicable, to provide such services in the vicinity of the Community, and to charge individual users a fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable. Declarant may receive, and shall be entitled to retain, any rebate, credit, fee, or incentive relating to the installation, operation, or provision of any Community Systems and Services.

During the Development and Sale Period, Declarant may require that the Association enter into agreements for the provision of Community Systems and Services to all Lots as a Common Expense, or to Lots within a particular Service Area as a Service Area Expense. If particular services or benefits are provided to particular Owners or Lots at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the costs as a Benefited Assessment.

#### 10.7. Rights To Use Names; License Agreements.

The Community Name, the name "Centex Homes," the name "Centex Destination Properties," and all similar or derivative names, along with all logos associated therewith, are the proprietary trade names and service marks of Centex Homes, Declarant, or their Affiliates. No Person shall use such trade names or service marks for advertising or any other purpose in any promotional material, whether printed, audio, video, or otherwise, in any signage, or in any logo or depiction or in any other fashion or manner without the prior written consent of the Person who owns such mark in each instance. In addition, due to the integrated nature of the Community as a planned community, and the public identification of the Lots with the Community, any name or "logo" to be used in connection with or displayed on any Lot, and any sales or other materials or documentation related to the use of the Lot, shall be subject to Declarant's prior written consent in each instance. Such approval may be given or withheld in Declarant's discretion and may be subject to such terms and conditions as Declarant deems appropriate in Declarant's discretion.

Notwithstanding the above, Owners may use the name "Bear Lake Reserve" where such term is used solely to specify that their particular Lot is located within the Community (subject, however, to such terms and conditions as Declarant may impose in order to protect any registered trade names and service marks).

The mark or trademark owner may condition such use of the mark by the Association or any Owner upon the signing of one or more license agreement(s) which are intended to protect the trade names and service marks from unauthorized use by others. Such license agreement(s) shall be non-exclusive, non-transferable, in form and substance acceptable to the owner of the mark.

10.8. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate, from time to time, the right to inspect, monitor, test, redesign, modify and correct any structure, improvement, or condition which may exist on any portion of the Community, including Lots, and a nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling or other structure on a Lot shall be permitted without the Owner's consent, which consent shall not unreasonably be withheld, conditioned, or delayed. The failure or refusal to permit reasonable access to the Lot for the purposes contemplated under this paragraph shall excuse Declarant or its designee from responsibility for repairs or damages. The Person exercising this easement shall promptly repair, and pay for, any resulting damage. The provisions of this paragraph do not impose any obligation on Declarant or any other Person to perform any such inspection, monitoring, testing, redesigning, modification, or correction.

10.9. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant has been first notified in writing and given an opportunity to meet with the property Owner and conduct an inspection.

10.10. Termination of Rights.

Rights granted Declarant under this Article (other than the rights granted in Sections 10.6 and 10.7) shall terminate upon the earlier of (a) the period specified in the particular Section, if any; or (b) 25 years from the date this Declaration is recorded. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. Notwithstanding the above, Declarant reserves for itself and its Affiliates a perpetual, non-exclusive easement of access to, and use of, the Common Areas in connection with the marketing and sale of other properties in order to show the Community as an example of Declarant's projects. This Article shall not be amended without Declarant's prior written consent.

10.11. Exclusion of Declarant's Other Properties.

By accepting a deed to a Lot, each Owner specifically acknowledges that nothing contained in this Declaration shall, in any way, either expressly or by implication, restrict, limit, or otherwise affect the use or disposition by Declarant or any Declarant Affiliate of any property either of them owns, whether contained within or contiguous to the Community. Declarant and its Affiliates shall have full, free, and unrestricted use of its and their other lands, notwithstanding any incompatibility of such use with restrictions this Declaration imposes upon the Lots. By accepting a deed to a Lot, each Owner, specifically and expressly disclaims any reciprocal negative easement in any property Declarant owns.

## Article XI Easements

### 11.1. Easements in Common Area.

Subject to the provisions below, every Owner shall have a right to use and an easement of enjoyment in and to the Common Areas or Limited Common Areas, as applicable, which shall be appurtenant to and shall pass with the title to the Lot owned by such Owner. Declarant grants to each Owner a right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying the property to the Association;
- (c) The Board's right to:
  - (i) adopt rules regulating Common Area use, including, without limitation, rules limiting the number of guests who may use the Common Area, and charge use fees for such use;
  - (ii) suspend the right of an Owner and the Occupants of such Owner's Lot to use any Common Maintenance Area amenity (A) for any period during which any assessment or other charge against the Owner's Lot remains delinquent, and (B) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration;
  - (iv) rent any portion of the Common Area on an exclusive or non-exclusive and permanent or short-term basis to any Person, including but not limited to the owner or operator of any Private Amenity;
  - (v) permit use by the general public, which use may, but need not, be subject to admission charges, membership fees, or other user fees established in the Board's discretion (except to the extent inconsistent with any easement agreement relating thereto); and
  - (vi) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 7.1;
- (d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "**Limited Common Areas**," if any, as described in Article XIII; and
- (e) The rights of Declarant to conduct activities and establish facilities as provided in Section 10.2.

Any Owner may extend such Owner's right to use the Common Area to the Occupants of such Lot, subject to reasonable Board regulation. An Owner who leases such Owner's Lot in accordance with this Declaration shall be deemed to have assigned all such rights to the tenant of such Lot for the lease term and shall not have any right to utilize the Common Area during such term, except as necessary to access the Lot. If use of a portion of the Lot is retained by the Owner, in compliance with Article III, then both the Owner and such Owner's tenants may use the Common Area, subject to any reasonable Board regulation.

Each Owner has a perpetual, non-exclusive ingress and egress easement to their Lot over the Roadways.

11.2. Easements of Encroachment.

Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area, between adjacent Lots, and between each Lot and any adjacent Private Amenity. Such easement shall permit encroachment only by a structure, improvement or fixture which has been constructed by Declarant or approved in accordance with Article IV of this Declaration and which is constructed on another's property without the actual intention of encroaching on such property. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, its duly authorized agents, successors and assigns, during the Development and Sale Period, and grants to the Association, subject to Declarant's rights under Section 10.6, perpetual, non-exclusive easements throughout the Community (but not through a structure) to: (i) install utilities and infrastructure to serve the Community, including, without limitation, community well and water storage and distribution systems, sewer and shared septic systems and shared septic drain fields, telephone, electric, gas, irrigation, cable and other systems for sending and receiving data and/or other electronic signals, drainage structures, facilities and systems, and security and similar systems and other Community Systems and Services; (ii) install walkways, pathways and trails, curb cuts, Roadways, shared driveways and other paved areas, street lights, and signage on property which Declarant or the Association owns or within rights-of-way or easements reserved for such purpose (or for the installation of landscaping or utilities) on a Plat; (iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; (iv) access and read utility meters; and (v) for any other purpose in Declarant's sole discretion. The right, license, or easement granted to a utility supplier shall include the non-exclusive right to ingress and egress over any Roadways and shared driveways for access and maintenance of its equipment and facilities.

Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to record such specific easements anywhere in the Community (except through a structure) as may be necessary or appropriate, in Declarant's sole discretion, to assist in the construction, development and operation of the Community, including but not limited to any Lot, and/or any Private Amenity, and such easements may be granted, transferred or assigned to Declarant, Declarant's Affiliates, Owners, utility providers, the owners or operators of any Private Amenities, and other third parties as deemed necessary or appropriate by Declarant.

(c) Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize, to the extent reasonably practicable, interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably practicable, to the condition existing prior to the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or Occupant. Nothing contained herein shall obligate Declarant or the



Association to pursue legal recourse against any Person damaging a Lot or any portion thereof as a result of the exercise of this easement.

11.4. Easements to Serve Additional Property.

Declarant reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area and Lots for enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area and Lots for construction of roads and for connecting and installing utilities.

11.5. Easement for Entry.

Declarant grants to the Association an easement and the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons. Such easement and right may be exercised by the Association through its officers, directors, committee members, employees, contractors, managers and agents in their capacities as such, and by all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner. This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

11.6. Easements for Maintenance and Enforcement.

(a) Declarant grants to the Association easements over the Community, including each Lot but excluding the interior of any dwelling, as necessary for the Association to (a) perform its maintenance responsibilities under the Governing Documents; and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

(b) Declarant grants to the Association an easement and right to enter a Lot, excluding the interior of any dwelling, to abate a Governing Document violation and/or remove any structure, thing or condition which violates the Governing Documents, using such measures as may be reasonably necessary. Any costs incurred, including Legal Costs, may be assessed against the Lot Owner as a Benefited Assessment.

(c) Entry under this Section shall not constitute a trespass, and prior notice to the Owner shall not be required except as provided in Section 7.5(b)(ii).

11.7. Easement for Walking Trail Access.

Subject to the right to designate Limited Common Areas pursuant to Article XIII, Declarant hereby grants to the Owners and Occupants, a perpetual, non-exclusive easement for enjoyment, use and access over and across any areas designated as "walking trails" or "paths" on any recorded subdivision plat of the Community. Use of such walking trails or paths shall be governed by reasonable rules and regulations promulgated by the Association.

11.8. Easements for Maintenance of Bodies of Water and Flooding.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and Wetlands located within the Common Maintenance Areas and the Community to (a) install, operate, maintain, repair, and replace pumps and other equipment to supply irrigation water to the Common Maintenance Areas or any Private Amenity; (b) construct, maintain, repair, and replace structures and equipment used for retaining, detaining, and otherwise controlling water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard and applicable legal requirements. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any portion of the Community to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Maintenance Area and Lots (but not inside a dwelling or other structure) adjacent to or within 50 feet of bodies of water and Wetlands within the Community, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Community; (b) alter in any manner and generally maintain the bodies of water and Wetlands within the Common Maintenance Areas; and (c) maintain and landscape the slopes and banks pertaining to such areas. Anyone exercising these easements shall use reasonable care in, and repair any damage resulting from, their intentional exercise of the easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to natural occurrences or for other occurrences not reasonably foreseeable or under the control of Declarant or such other Person.

11.9. Easements for Cross-Drainage.

All portions of the Community shall be burdened with easements for drainage of stormwater runoff from other portions of the Community; provided, however, that no Person other than Declarant shall alter the drainage on any Lot to increase materially the drainage of stormwater onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Board, and Declarant during the Development and Sale Period.

11.10. Rights to Stormwater Runoff, Effluent, and Water Reclamation.

Declarant reserves for itself and its designees all rights to ground water, surface water, stormwater runoff, and effluent located or produced within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include, without limitation, the reservation of an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent.

11.11. Easement for Maintenance of Surface Water and Storm Water Management System.

Declarant and the Association shall have a perpetual, non-exclusive easement over all portions of the surface water and storm water management system for access to operate, maintain, repair, or replace the system. By this easement, Declarant and the Association shall have the right to enter upon any portion of any Lot which is a part of or adjacent to the surface water and storm water management system, at a reasonable time and in a reasonable manner, to operate, maintain, repair, or replace the system as the County or any governmental agency or quasi-governmental body requires or permits. Additionally, Declarant and the Association shall have a perpetual, non-exclusive easement for drainage and maintenance over the entire surface water and storm water management system as necessary for the

operation, maintenance, repair, and replacement of such equipment. No Person other than Declarant shall alter the drainage flow of or over the surface water and storm water management system, including, without limitation, buffer areas or swales, without the Association's prior written approval, and, during the Development and Sale Period, Declarant's prior written consent.

#### 11.12. Sign Easement.

Declarant reserves for itself and the Association an easement (herein referred to as the "Entry, Sign, and Landscape Easement"), over, upon, and across all areas designated as "Landscape Tract," "Signage Tract," "Landscape Area," "Entryway Feature Easement Area or Tract," or "Open Space" or identified by similar designation, on any Plat, for erection, installation, operation, maintenance, repair, and replacement of Community signs, walls, monuments, fencing, decorative improvements, entry features, together with landscaping, lighting, utility, and irrigation facilities. No Owner shall obstruct access to the Entry, Sign, and Landscape Easement, or install or remove any plant or other improvement or installation placed in the Entry, Sign, and Landscape Easement by the beneficiaries thereof, or obstruct the view of the Entry, Sign, and Landscape Easement from the adjacent Roadway right-of-way. All signs, walls, monuments, entry features, landscaping, utility, irrigation and other permanent improvements installed in the Entry, Sign, and Landscape Easement by Declarant shall become the Common Area of the Association upon conveyance from Declarant, and the Association shall maintain such Entry, Sign, and Landscape Easement and the improvements therein as part of the Common Area. In addition, Declarant and any designee of Declarant shall have the right, without the prior approval of the Association or any Owner, within the Entry, Sign, and Landscape Easement, to erect, change, move, remove, repaint, maintain, and otherwise exercise complete and unfettered control over marketing signs at all times during the Development and Sale Period and all such marketing signs shall be and remain the exclusive property of Declarant (or such designee of Declarant) and shall not be deemed part of the Common Area owned by the Association. The designation of an area as a Landscape Tract, Signage Tract, Landscape Area, Entryway Feature Easement Area or Tract, or Open Space shall not be deemed to obligate, or to limit the right of, Declarant or the Association to install or construct any particular improvement or landscaping within such tract or area.

#### 11.13. Easement for Irrigation Equipment.

If there is a master irrigation system for all or any portion of the Community, Declarant and the Association shall have a perpetual, non-exclusive easement over, under and through all exterior portions of each Lot, except any area upon which buildings have been erected by Declarant or otherwise in accordance with Article IV, for the purpose of installing, maintaining, repairing, replacing and operating all irrigation equipment, systems and lines serving all or any portion of the Lots and/or Common Area. The foregoing easement shall not impose any obligation on the Association and/or Declarant to install any such improvements.

#### 11.14. Roadways.

(a) The Roadways shall be owned by the Association as part of the Common Area and shall not be dedicated to the County or to public use by recordation of such Plat. Use of such Roadways and any shared driveways shall be subject to and in accordance with any rights and easements shown on the Plats and such reasonable Use Restrictions and rules as the Association may adopt from time to time consistent with this Declaration, the Plat, and any law, ordinance, or regulation governing the Community. The paved portions of the Roadways may not be constructed or installed in the exact locations as depicted on Plats and may be changed or relocated from time to time.

(b) Declarant hereby reserves unto itself, its agents, employees, successors, and assigns an easement over the Roadways for the purpose of constructing, maintaining, repairing, or rebuilding any

subdivision improvements installed or to be installed in the Community and for performing any other work within the Community (including Lots) which Declarant deems reasonably necessary, in its discretion, or which Declarant is required to perform pursuant to a contract with any Owner or pursuant to the requirements of any government agency having jurisdiction over the Community. With regard to construction on any of the Lots by the Owners thereof, the contractors, subcontractors, laborers, materialmen, and other Persons providing construction services and materials to any such Lots shall have access to such Lots over the Roadways subject to such rules as the Association may adopt; provided, however, that during the Development and Sale Period, Declarant shall have the right to prohibit the use of the Roadways by such Persons and to designate alternate access easements for such Persons.

(c) Declarant hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over the Roadways for Owners, law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; and for vehicles, equipment, and personnel providing garbage collection service to the Community provided that such easement shall not authorize any such Persons to enter the Community except while acting in their official capacities.

(d) Declarant hereby creates for the Owners and Occupants of each Lot a perpetual, nonexclusive easement for the construction, installation, use and maintenance of private and shared driveways, utility lines, mailboxes, underground trash containers, landscaping, and other improvements (such construction or installation being subject to approval as required under Article IV) over any area depicted on a Plat as a shared driveway serving such Owner's Lot and over any portion of a Roadway right-of-way adjacent to such Lot. Exercise of such easement rights shall be subject to the Governing Documents, including but not limited to, the architectural review rights in Article IV, the maintenance requirements of Section 5.1 and the Common Area easements set forth in Section 11.1.

(e) The existence of this easement shall not preclude the Association from maintaining devices or systems designed to limit general vehicular access to the Community, provided that the Association at all times maintains systems and/or procedures to permit the uncontested entry of Persons authorized to exercise access, ingress and egress easements without unreasonable interference or delay.

#### 11.15. Easement and Rights of Third Parties.

(a) Declarant hereby reserves for itself and grants to the Association, to the relatives or descendants of any deceased person in any cemetery or burial ground that is located within the boundaries of the Community, and to any persons seeking access to any cemetery or burial ground for academic or historical purposes, a nonexclusive, perpetual easement of ingress and egress over such portions of the Common Area as are necessary for such access.

(b) Owners acknowledge that third parties, including but not limited to Duke Power Company and certain owners of portions of the property described on Exhibit "B" and other property in the vicinity of the Community, may have access and easement rights through the Community by virtue of recorded documents, prescriptive easements, and/or other equitable and legal rights. This provision is not intended to create or grant any right or easement to any third party, and no Person may claim or assert any third party beneficiary rights pursuant to this Section.

#### 11.16. Easement for Special Events.

Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive appurtenant easement over the Common Area for the purpose of conducting or allowing its designees to conduct educational, cultural, entertainment, promotional or

sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the Occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

#### 11.17. General Development Easements.

Declarant reserves for itself, its successors or assigns, a blanket easement throughout the entire Community, to allow it to take whatever action it determines is necessary or beneficial to the construction, development or operation of the Community. This blanket easement is to allow Declarant to construct all of its improvements in the Community, whether on Common Area or on Lots, in the manner that it deems necessary. This means that Declarant has access and use of any Lot or Common Area as is necessary to construct any improvement within the Community or any Private Amenity. It also is reserved for the purpose of allowing Declarant, if it deems necessary, to repair, relocate, construct, or maintain any of the improvements installed in the Community.

#### 11.18. Liability for Use of Easements.

No Owner shall have a claim or cause of action against Declarant, any Declarant Affiliate, the Association, their successors or assigns, including without limitation the owner(s) or operator(s) of any Private Amenities, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Community, except in cases of willful or wanton misconduct.

#### 11.19. Release and Termination of Easements.

Declarant reserves unto itself the right, in its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Community, or at any other time, (a) to release all or any portion of the Community from the burden, effect, and encumbrance of any of the easements granted or reserved under this Article; or (b) to define the limits of any such easements. This Article may not be amended without Declarant's consent, and the easements and other rights created in this Article shall survive termination of this Declaration.

### **Article XII     Conservation Easements, Natural Conditions and Preserves**

#### 12.1. Conservation Easements.

(a) Establishment of Conservation Easements. The provisions of Chapter 113A, Article 16, North Carolina General Statutes establish the right of the Department of Environment and Natural Resources (the "Easement Grantee"), to accept easements for the preservation of the natural habitat (such easements shall be referred to herein as the "Conservation Easements"). There are no Conservation Easements established by this Declaration; provided, however, that Declarant reserves unto itself and to the Association the right to grant such easements over and upon portions of the Common Area or Lots unto the Easement Grantee pursuant to the provisions of Chapter 113A, Article 16, North Carolina General Statutes. Any Conservation Easements so granted shall be subject to the requirements of Chapter 113A, Article 16, North Carolina General Statutes, and the following provisions. For the purposes of this Declaration, any portion of the Community encumbered by a Conservation Easement shall be referred to as the "Conservation Easement Property."

(b) Purpose. The purpose of a Conservation Easement is to assure that the Conservation Easement Property will be retained forever in its existing natural condition and to prevent any use of the Conservation Easement Property that will impair or interfere with the environmental value of the Conservation Easement Property.

(c) Prohibited Acts and Uses. Any activity on or use of the Conservation Easement Property inconsistent with the purpose of a Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses may be expressly prohibited by the terms of any Conservation Agreement:

(i) constructing or placing buildings, roads, signs, billboards, or other advertising, utilities or other structures on or above the ground;

(ii) dumping or placing soil or other substances or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials;

(iii) removing, mowing, trimming or destroying trees, shrubs, or other vegetation;

(iv) excavating, dredging, or removing loam, peat, gravel, soil, rock, or other material substances in such a manner as to affect the surface;

(v) using the surface area of the Conservation Easement Property, except for purposes that permit the land or water area to remain predominantly in its natural condition;

(vi) activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;

(vii) acting upon or using the Conservation Easement Property in a manner detrimental to such retention of land or water areas;

(viii) acting upon or using the Conservation Easement Property in a manner detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance;

(ix) constructing or installing utilities on, below, or above the ground without appropriate local, state, and federal permits or other authorization; and

(x) applying of herbicides, pesticides, or fertilizers.

(d) Reserved Rights. The owner of record title to the Conservation Easement Property reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Conservation Easement Property, including, without limitation, the right to engage in or permit or invite others to engage in all uses of the Conservation Easement Property that are not expressly prohibited by the terms of any Conservation Easement and are not inconsistent with the purpose of the Conservation Easement.

(e) Rights of Easement Grantee. To accomplish the purposes stated herein, the owner of record title to the Conservation Easement Property shall grant the following rights to the Easement Grantee and Declarant:

(i) to enter upon and inspect the Conservation Easement Property in a reasonable manner and at reasonable times to determine if the Association, the Owners and Declarant or its

successors and assigns are complying with the covenants and prohibitions contained in the Conservation Easement; and

(ii) to proceed at law or in equity to enforce the provisions of the Conservation Easement and the covenants set forth therein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Conservation Easement Property that may be damaged by any activity inconsistent with the Conservation Easement.

(f) Acts Beyond Declarant's Control. Nothing contained in any Conservation Easements shall be construed to entitle the Easement Grantee to bring any action against Declarant or the Association for any injury to or change in the Conservation Easement Property resulting from natural causes beyond Declarant's or the Association's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Declarant under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Easement Property or to persons resulting from such causes.

(g) Successors. The covenants, terms, conditions, and restrictions of any Conservation Easements shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Conservation Easement Property.

(h) Restrictive Covenants Affecting Conservation Easements. No Owner or other person shall cut, remove, destroy, or otherwise disturb any plant, shrub, tree, or other vegetation within any Conservation Easement Property, nor shall any person, including, but not limited to any Owner, Declarant, and the Association, deposit dirt, fill, grass clippings, trash, rubbish, tree trimmings, building materials, or other waste within such easements without the prior written consent (as evidenced by any required permit or other official certification) of the Association or Declarant.

#### 12.2. Natural Conditions.

(a) The Community may contain a number of manmade, natural, and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, including, without limitation, insects, venomous and non-venomous snakes and other reptiles, bears, deer, raccoons, opossums, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and Occupant of any Lot, and every Person entering the Community: (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movements within or through the Community; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife within the Community. Neither the Association, Declarant, any predecessor Declarant, any builder, nor the members, partners, affiliates, officers, directors, shareholders, attorneys, agents, or employees of any of the foregoing, shall have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community, nor shall they have any liability for any injury resulting from the presence, movement, or propagation of any plant or wildlife within or through the Community.

(b) Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, to engage in wildlife and fishery management plans and practices within the Community to the extent that such practices are permitted by applicable state and federal law. For the purpose of illustration and not limitation, this includes the right to manage and control any populations of wildlife through a variety of techniques. Declarant may, in its discretion, commission environmental studies and reports relating to the Community and the wildlife habitats located thereon, and may elect to follow or disregard

any recommendations resulting from such studies. Declarant may assign these management rights to the Association in which event the expenses of such activities shall be funded by Regular Assessments.

(c) From time to time, certain portions of the Community may be designated as "Buffer Areas" by Declarant, the Board, the County, and other Governmental Authorities. Currently, all property located within 30 feet of a stream or within 30 feet of the Lake are designated as "Buffer Areas." Unless otherwise approved in writing by Declarant or designated by the Board, the County and any other governmental authorities having jurisdiction, the Buffer Areas shall be maintained in their natural state in perpetuity. No Owner or Occupant, or any other Person acting, or purporting to act, on behalf of any Owner, or for whom any Owner shall be responsible pursuant to this Declaration, shall disturb the natural environment of the Buffer Areas in any way without first obtaining the written consent of the Board properly approved by the adoption of a resolution describing in detail the exact activities to be conducted within the Buffer Areas, the times and dates when such activities are authorized to occur, and the identities of the Persons who are authorized to so act, together with the written consent of Declarant and any governmental authority having jurisdiction over the proposed activity

This restrictive covenant is intended in the broadest sense, and includes, but is not limited to, trimming, cutting, or mowing grass, shrubs, trees or other plants; placing grass clippings, landscape debris, household trash or other materials; storing materials, equipment, vehicles, boats, motor homes, trailers, or other items; erecting children's playhouses, tree houses, swings, or other permanent or temporary improvements; planting trees, shrubs, grass, or ground cover; releasing birds, snakes, reptiles, insects, or other animals; grading or excavating; cultivating or gardening; or dumping or removing dirt, sand, rocks, gravel, or other inorganic or organic material on any part of a Buffer Area.

Any Owner who violates the foregoing restrictive covenants shall be responsible for the cost of restoring the affected Buffer Area to the satisfaction of the Association, Declarant, and any governmental authority having jurisdiction thereof, and the Association shall have the right to prohibit the offending party from further use or enjoyment of the Buffer Areas after prior notice and hearing before the Board.

(d) Areas within the Community include various conditions that may affect construction, including but not limited to, steep mountain slopes, rock outcroppings, and unstable or expansive soil conditions. In addition, the Community may be subject to rock and mud slides from time to time. These conditions may necessitate the use of special construction techniques to build on or use Lots. Owners are encouraged to seek professional advice and assistance prior to the commencement of construction on any Lot. The topography and weather conditions may, from time to time, affect access and the availability of facilities, services, utilities, and fire and police protection.

#### **Article XIII Limited Common Areas**

##### **13.1. Purpose.**

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and Occupants of one or more, but less than all, Lots. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, Roadways and shared driveways, and other portions of the Common Area primarily serving a limited area. All costs associated with ownership, maintenance, repair, replacement, management, operation and insurance of a Limited Common Area shall be a Limited Common Expense allocated in accordance with Section 8.1(b) among the Lots in the Service Area to which the Limited Common Area is assigned.



### 13.2. Designation.

Limited Common Areas may be designated as such in the deed conveying such areas to the Association, in any Supplemental Declaration, or on the Plat relating to such Common Area; however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots during the Development and Sale Period.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area upon approval of (a) the Board, (b) Members representing a majority of the total Class "A" votes in the Association, and (c) Members entitled to cast a majority of the Class "A" votes attributable to Lots to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require Declarant's written consent.

### 13.3. Use by Others.

Upon approval of a majority of Owners of Lots to which any Limited Common Area is assigned, and subject to such restrictions as such Owners may impose, the Association may permit Owners of other Lots to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Limited Common Expenses attributable to such Limited Common Area. During the Development and Sale Period, any such use shall also require Declarant's written consent.

## Article XIV Party Walls and Other Shared Structures

### 14.1. General Rules of Law to Apply.

Each wall, fence, driveway, or similar structure built as a part of the original construction on the Lots that serves any two adjoining Lots shall constitute a party structure. For the purposes of this Article, any fence that serves to enclose only one Lot or which is otherwise installed at the option of the Owner of a Lot shall not be deemed a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to party structures. Any dispute arising concerning a party structure shall be handled in accordance with any applicable provisions of Article XV.

### 14.2. Maintenance; Damage and Destruction.

Unless otherwise specifically provided in additional covenants relating to such Lots, the Owners sharing the party structure shall share equally in the cost of necessary or appropriate party structure repairs and maintenance; provided, however, that painting and other aesthetic modifications visible only to one side of the structure shall be the responsibility of the Lot Owner with such visibility.

If a party structure 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 sharing the structure may restore it and be entitled to contribution for the restoration cost in equal proportions from other sharing owners. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. The Owner of each Lot is granted an easement over the adjacent Lot as necessary to make repairs and restore the Lot.

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.

## Article XV     Dispute Resolution

### 15.1.     Dispute Resolution.

It is the intent of the Association and Declarant to encourage the amicable resolution of disputes involving the Community and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Community, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures. Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

### 15.2.     Initiation of Litigation by Association.

To the fullest extent permitted by law, after the Class "B" Control Period, the Association shall not initiate any judicial or administrative proceeding, which is reasonably expected to cost \$25,000.00 or more in legal fees to prosecute to completion, unless first approved by the Board upon the specific recommendation of the Dispute Resolution Committee (if created as provided in the By-Laws), or a majority of the Class "A" votes in the Association. If Voting Delegates have been elected, a Voting Delegate shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners holding 80% of the total votes attributable to Lots in the Service Area represented by the Voting Delegate. The Dispute Resolution Committee's recommendation must be in writing and must be accompanied by a feasibility analysis including an explanation of the issues, a budget for legal and related expenses, the amount in controversy, the expectation of success, and a copy of bids from a minimum of three qualified law firms.

## Article XVI     Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

### 16.1.     Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby 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 a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or Occupant which is not cured within 60 days;

- (c) Any lapse, cancellation, or material modification of any Association insurance policy;
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders; or
- (e) If HUD is insuring or VA is guaranteeing the Mortgage on any Lot, material amendment to the Governing Documents or extraordinary action of the Association, as defined under VA Pamphlet 26-7, as it may be amended or superceded.

Otherwise, no consent from Eligible Holders shall be necessary to enable the Association to accomplish any of its operational duties and responsibilities or to exercise any of its rights.

#### 16.2. Special FHLMC Provision.

To the extent required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Class "A" Members representing at least 67% of the total Association vote consent, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);
- (b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (any decision or action in accordance with the provisions of this Declaration or any Supplemental Declaration subsequently recorded on any portion of the Community resulting in the levy of Service Area Assessments shall not be subject to this provision);
- (c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);
- (d) Fail to maintain insurance, as required by this Declaration; or
- (e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

16.3. Other Provisions for First Lien Holders.

To the extent not inconsistent with applicable law and in addition to the provisions in this Declaration:

(a) Any restoration or repair of the Community after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications, unless the approval is obtained of the Eligible Holders of first Mortgages on Lots to which more than 50% of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which more than 50% of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

16.4. Construction of Article XVI.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the By-Laws, or applicable law for any of the acts set out in this Article.

16.5. No Priority.

No provision of this Declaration or the By-Laws 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 Area.

16.6. Notice to Association.

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

16.7. Failure of Mortgagee to Respond.

Any Mortgagee (and for purposes of this paragraph "Mortgagee" shall include FHA, VA, HUD, FNMA, FHLMC, or other similar governmental or quasi-governmental agency) who receives a written request from the Board to respond to or consent to any action, shall be conclusively deemed to have irrevocably approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified mail, return receipt requested; or overnight delivery by a nationally recognized courier that provides tracking and receipt services; or personal delivery.

**Article XVII Disclosures and Waivers**

17.1. No Liability For Third Party Acts.

Owners and Occupants of Lots are responsible for their own personal safety and for their property in the Community. The Association may, but is not obligated to, maintain or support certain activities within the Community which are intended to promote or enhance safety or security within the Community.

No representation or warranty is made that any systems or measures, including, without limitation, fire protection, burglar alarm, or other security monitoring systems, (or mechanism or system for limiting access to the Community, if any), cannot be compromised or circumvented, nor that any such systems or measures undertaken will prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing the Occupants of its Lot that the Association, the Board, its officers and its committees, Declarant, any Declarant Affiliate, and any predecessor Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties. Each Owner on behalf of itself and the Occupants of its Lot agrees to release and discharge the Association, the Board, its officers and its committees, Declarant, any Declarant Affiliate, and any predecessor Declarant from and against any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths and expenses of whatever nature or kind, including, without limitation, Legal Costs arising by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Any mechanism or system for limiting access to the Community may, at Declarant's discretion, be left open or unattended, from time to time or at any time, to facilitate access by contractors, subcontractors, inspectors, brokers, salespersons and others to any sales office and/or Lots that are under construction or for sale. In addition, the boundaries of the Community will not be enclosed by perimeter fencing.

Declarant or the owner or operator of the Club may, but shall not be obligated to, employ or retain, at Declarant's or the Club's sole cost and expense, a person or persons to staff a greeter's cottage or gatehouse located at the entrance to the Community and perform such functions on its behalf as Declarant or the Club, in their discretion, deem appropriate, including, but not limited to, facilitating access by contractors, subcontractors, inspectors, brokers, and salespersons, and others to any sales office and/or Lots that are under construction or for sale. Any such person employed or retained by Declarant or the Club shall under no circumstances be responsible for the security or safety of any persons or property within the Community, nor shall the Association or any Owner or Occupant of the Community be authorized to direct or request favors of any such person. Neither Declarant, the Club nor the Association shall have any obligation to staff any greeter's cottage or gatehouse.

#### 17.2. View Impairment.

Neither Declarant, any Declarant Affiliate, nor the Association guarantee or represent that any view over and across the Lots, any open space or Common Area, the Lake, or any other portion of the Community will be preserved without impairment. Neither Declarant, any Declarant Affiliate nor the Association shall be obligated to relocate, prune, or thin trees or other landscaping. The Association (with respect to the Common Area), Declarant and Declarants Affiliates have the right to relocate, prune, thin, or add trees and other landscaping and improvements from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

#### 17.3. Notices and Disclaimers as to Community Systems and Services.

In recognition of the fact that interruptions in satellite and/or cable television and other Community Systems and Services will occur from time to time, neither Declarant, any predecessor Declarant, nor any of Declarant's successors or assigns (or their Affiliates) shall in any manner be liable for, and no Community System and Service user shall be entitled to refund, rebate, discount, or offset in applicable fees, for any interruption in Community Systems and Services, regardless of whether or not

such interruption is caused by reasons within the service provider's control. Declarant shall be entitled to retain any rebate, discount, or other compensation received from the provider of any Community Systems and Services in connection with the installation or operation of such system.

#### 17.4. Construction Activities.

All Owners and Occupants are hereby placed on notice that Declarant, any Declarant Affiliate, and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, as well as other Owners shall continue, from time to time, to conduct construction activities, which may include, but shall not be limited to, use of explosives, within and/or adjacent to the Community. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and/or by using any portion of a Lot or the Community generally, Owners and Occupants acknowledge, stipulate, and agree: (a) that such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise), any property within or in proximity to the Lot or any other portion of the Community where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) to release and discharge Declarant, any Declarant Affiliate, any predecessor Declarant, and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, from and against any and all losses, claims, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths and expenses of whatever nature or kind, including, without limitation, Legal Costs arising from or relating to any breach of this covenant; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant and its Affiliates to sell, convey, lease, and/or allow the use of Lots within the Community.

#### 17.5. Water Management.

Each Owner acknowledges and agrees that some or all of the water features, including but not limited to ponds, streams, the Lake, and Wetlands in or adjacent to the Community may be designed as water management areas and are not designed solely as aesthetic features. Due to fluctuations in water elevations within the immediate area, water levels will rise and fall. Each Owner further acknowledges and agrees that neither the Association nor Declarant has, and neither is obligated to exert, control over such elevations. Therefore, each Owner agrees to, and does by purchase of a Lot, release and discharge Declarant, Declarant's Affiliates, any predecessor Declarant, and the Association from and against any and all losses, claims, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths, and expenses of whatever nature or kind, including, without limitation, Legal Costs, related to or arising out of any claim relating to such fluctuations in water elevations. Owners shall not alter, modify, expand, fill, or otherwise adversely affect any water features, Wetlands or waterways located within or in the vicinity of the Community without the prior written approval of Declarant and any local, state, or federal regulatory or permitting authorities as may have relevant jurisdiction over such matters.

#### 17.6. Lakes and Other Water Bodies.

Each Owner acknowledges, understands and covenants to inform all Occupants of its Lot that the Lake, Lake water levels, and the lakeshore surrounding the Lake between the waterfront boundary of Lots as shown on Plats and the waterline of the Lake, is owned, controlled, and/or maintained by Duke Power Company and that any decision concerning use of the Lake and such area shall be made in the discretion of Duke Power Company. Each Person using the Lake shall do so only as permitted under the Lake Use Restrictions and applicable governmental laws, ordinances, rules and regulations. Neither the Association, Declarant, nor any Declarant Affiliate makes any guarantee that the Owners will have any

rights to use the Lake. Provisions in this Declaration referencing use of the Lake shall not be construed or interpreted as representations that the Owners are or will be granted access to and use rights over the Lake.

Each Owner, by the acceptance of title to a Lot, acknowledges that owning property adjacent to the Lake has benefits as well as detriments and that the detriments may include, but are not limited to: (a) disturbance and loss of privacy resulting from use by third parties of the Lake and that portion of the lakeshore that is owned by Duke Power Company; (b) the risk of damage or injury as described more fully below; and (c) view restrictions caused by maturation of trees and shrubbery. Neither Declarant, Declarant's Affiliates, the Club, the Association or Duke Power Company shall have any obligation to take steps to remove or alleviate any such risks or detriments.

DECLARANT AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS, FOR THE LAKE OR ANY OTHER WATERWAYS. ANY INDIVIDUAL USING THE LAKE OR ANY OTHER WATERWAYS SHALL DO SO AT HIS/HER OWN RISK AND HEREBY HOLDS DECLARANT, ANY PREDECESSOR DECLARANT, ANY DECLARANT AFFILIATE, AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

EACH OWNER, BY THE ACCEPTANCE OF TITLE TO A LOT, ACKNOWLEDGES THAT THE LAKE AND OTHER WATERWAYS ARE DEEP AND DANGEROUS. NEITHER DECLARANT, ANY PREDECESSOR DECLARANT, DECLARANT'S AFFILIATES, THE ASSOCIATION NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES"), SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF/IN THE LAKE OR ANY WATERWAY WITHIN THE COMMUNITY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY AND ALL LOSSES, CLAIMS, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE, OR OTHERWISE), INJURIES, OR DEATHS, AND EXPENSES OF WHATEVER NATURE OR KIND, INCLUDING, WITHOUT LIMITATION, LEGAL COSTS, OCCURRING IN, OR OTHERWISE RELATED TO THE LAKE OR ANY WATER BODY, ALL PERSONS USING SAME DO SO AT THEIR OWN RISK. ALL OWNERS AND USERS OF ANY PORTION OF THE COMMUNITY SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO RELEASE THE LISTED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN THE LAKE OR OTHER WATER BODIES. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME WILDLIFE MAY HABITATE OR ENTER INTO THE LAKE OR WATER BODIES WITHIN OR NEARBY THE COMMUNITY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

#### 17.7. Buffer Areas.

BECAUSE THE BUFFER AREAS AND OTHER NATURAL AREAS ARE TO BE RETAINED IN THEIR NATURAL STATE, SUCH AREAS SHOULD BE CONSIDERED HAZARDOUS FOR RECREATIONAL ACTIVITIES.

NEITHER THE ASSOCIATION, NOR DECLARANT, NOR ANY OF THEIR AFFILIATES, HAS ANY OBLIGATION TO PROVIDE SECURITY OR SUPERVISION FOR ANY PERSON USING A BUFFER AREA OR ANY OTHER NATURAL AREA, AND ALL PERSONS USING SUCH AREAS DO SO AT THEIR OWN RISK.

INSECTS, SNAKES, AND ANIMALS THAT MAY BE DANGEROUS TO HUMANS MAY INHABIT THE BUFFER AND OTHER NATURAL AREAS.

OWNERS SHOULD NOT ALLOW CHILDREN OR PETS TO ENTER ANY BUFFER OR OTHER NATURAL AREA WITHOUT ADULT SUPERVISION.

NEITHER THE ASSOCIATION NOR DECLARANT, DECLARANT'S AFFILIATES, NOR ANY PREDECESSOR DECLARANT SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CONDITION OF A BUFFER OR OTHER NATURAL AREA OR ANY INJURY OR DEATH OCCURRING THEREON.

THE ASSOCIATION SHALL HAVE THE RIGHT TO IMPOSE ADDITIONAL RULES AND REGULATIONS GOVERNING THE USE OF BUFFER AND OTHER NATURAL AREAS.

IF ANY BUFFER AREA OR OTHER NATURAL AREA, OR THE TREES OR VEGETATION THEREON, ARE DAMAGED OR DESTROYED BY FIRE, WINDSTORM, FLOOD, DISEASE, OR OTHER NATURAL OR MANMADE EVENT, NEITHER THE ASSOCIATION, NOR DECLARANT, NOR ANY DECLARANT AFFILIATE, SHALL HAVE ANY OBLIGATION TO REPAIR OR RESTORE THE DAMAGE OR DESTRUCTION, OR TO REMOVE ANY DEAD OR DAMAGED TREES OR OTHER VEGETATION.

#### 17.8. Utility Lines.

Each Owner on behalf of such Owner and the Occupants of such Owner's Lot acknowledges that neither the Association, the Board, Declarant, any predecessor Declarant, nor any Declarant Affiliate shall in any way be considered insurers or guarantors of health within the Community and neither the Association, the Board, Declarant, any predecessor Declarant, nor any Declarant Affiliate shall be held liable for any and all losses, claims, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths, or expenses of whatever nature or kind, including, without limitation, Legal Costs, caused by or related to the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Community. Each Owner and Occupant assumes all such risks arising from the presence of utility lines, utility sub-stations or other utility facilities and further acknowledges that neither the Association, Declarant, any predecessor Declarant, nor any Declarant Affiliate have made any representations or warranties, nor has any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

#### 17.9. Trails.

Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas within the Community, including the Common Area, to be used as recreational pathways and trails ("trail system"). Use of the trail system shall be subject to the reasonable rules and regulations of the Association. Any individual using the trail system shall do so at his/her own risk. Each Owner acknowledges, understands and covenants to inform the Occupants of such Owner's Lot, that the Community may contain a trail system and that there may be certain inconveniences and loss of privacy associated with the ownership of Lots adjacent to such trail system resulting from the use of the trail



system by Declarant, Declarant's Affiliates, the Association, its Members, Occupants of Lots, and their respective invitees.

17.10. Liability for Association Operations.

The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant and any predecessor Declarant (including, without limitation, their respective Affiliates, successors, and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, Legal Costs), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Common Maintenance Areas and the collection of assessments.

**Article XVIII Private Amenities**

18.1. General.

Private Amenities shall not be a portion of the Common Area, and neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest in or easement or other rights to use any Private Amenity. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners and operators of the Private Amenities. The owners and operators of the Private Amenities shall have the right, from time to time in their discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use, extent of use privileges, and number of users; and to require the payment of a purchase price, membership contribution, initiation fee, membership deposit, dues, use charges and other charges for use privileges; and to change, eliminate or cease operation of any or all of the facilities; and to reserve use rights; and to terminate use rights altogether, subject to the terms of any written agreements.

In furtherance, and not in limitation of the foregoing, privileges to use the Private Amenities shall be subject to the terms and conditions of the membership documents for the Club, as the same may be amended from time to time (the "Membership Plan Documents"). Acquisition of a membership in the Club requires the payment of a membership purchase price called a membership contribution or membership deposit, and membership dues, fees and charges. These amounts shall be determined by Declarant and/or the Club as set forth in the Membership Plan Documents for the Club.

Any entry upon a Private Amenity without permission of the Owner may be deemed a trespass, and each Owner shall refrain from, and shall cause all Occupants of such Owner's Lot to refrain from, any unauthorized entry upon any Private Amenity.

18.2. Conveyance of Private Amenities.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, Declarant's Affiliates, the Association, any builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the owner or operator of the Private Amenity. Further, the ownership or operation of the Private Amenities may change at any time by virtue of, but without limitation, the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator. No consent of the Association, any Service Area

Association, any Voting Delegate, or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

#### 18.3. View Impairment.

Neither Declarant, any Declarant Affiliate, the Association, nor the owner or operator of any Private Amenity, guarantees or represents that any view of, over and across any Private Amenity from Lots will be preserved without impairment. The owners or operators of any Private Amenity shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their discretion, to add trees and other landscaping and/or to install improvements or barriers (both natural and artificial) to the Private Amenities from time to time. In addition, the owner or operator of any Private Amenity which includes a golf course may, in its discretion, change the location, configuration, size and elevation of the trees, landscaping, bunkers, fairways and greens, improvements and barriers (both natural and artificial) from time to time. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view of, over or across, a Private Amenity which the Lot may enjoy as of the date of the purchase of the Lot may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of improvements or barriers (both natural and artificial) on the Private Amenity. Neither Declarant, any predecessor Declarant, Declarant's Affiliates, the Association or the owner or operator of the Private Amenity shall have any liability to any Owner as a result of any such modifications to a Private Amenity.

#### 18.4. Golf Course.

By acceptance of a deed to any Lot, each Owner acknowledges and agrees that owning property adjacent to a golf course has benefits as well as detriments and that the detriments include, without limitations: (a) the risk of damage to property or injury to persons and animals from golf balls which are hit onto an Owner's Lot or other portion of the Community or arising from the design, construction, operation, maintenance and/or use of the golf course; (b) the entry by golfers onto an Owner's Lot or other portion of the Community utilized by the golfer to retrieve golf balls and/or other acts or omissions of persons using the golf course; (c) noise from golfers, spectators and special events; (d) overspray of herbicides, fungicides, pesticides, fertilizers and water in connection with the maintenance of the roughs, fairways and greens on the golf course; (e) noise from golf course maintenance and operation equipment (including, without limitation, compressors, blowers, mulches, tractors, utility vehicles and pumps), all of which may be operated at all times of the day and night and/or continuously; (f) odors arising from irrigation and fertilization of the turf situated on the golf course; (g) disturbance and loss of privacy resulting from motorized golf car traffic, golfers and golf course maintenance personnel; (h) artificial light illuminating from any facilities; (i) the existence of water hazards and/or ponds on the golf course; and (j) view restrictions caused by maturation of trees and shrubbery. Additionally each Owner acknowledges that pesticides and chemicals may be applied to the golf course throughout the year and that reclaimed water, treated waste water or other sources of non-potable water may be used for irrigation of the golf course. Neither Declarant, Declarant's Affiliates, the Club, the Association or the owner or operator of any Private Amenity shall have any obligation to take steps to remove or alleviate any such risks or detriments.

Each Owner on behalf of such Owner and the Occupants of such Owner's Lot hereby assumes such risks of owning property adjacent to a golf course and forever waives and relinquishes, and agrees not to institute any action or suit at law or in equity nor to institute or prosecute, any claim, demand or compensation against Declarant, any predecessor Declarant, or any Declarant Affiliate; the Association or

its Members (in their capacity as such); the owner(s) or operator(s) of the Private Amenities or their successors, successors-in-title, or assigns; any builder or contractor (in their capacities as such); the golf course designer or builder; any officer, director, member, manager, or partner of any of the foregoing, or any officer, director, member or manager of any partner of the foregoing for or on account of any damages, loss, or injury either to person or property, or both, resulting directly or indirectly from the design, construction, operation, maintenance and/or use of the golf course. Each Owner hereby agrees to take any necessary steps to maintain adequate hazard and other insurance policies to protect such Owner and the Occupants of such Owner's Lot against all such risks associated with the golf course. Each Owner hereby agrees to indemnify and hold harmless all of the above-named Persons against any and all claims by the Occupants of such Owner's Lot.

#### 18.5. Open Space Disclosure.

Notwithstanding the fact that any golf course or other Private Amenity located adjacent to the Community may constitute open space or a recreation area for purposes of applicable zoning ordinances and regulations, each Owner by acquisition of title to a Lot releases and discharges forever Declarant, any predecessor Declarant, and Declarant's Affiliates, the Association and its Members (in their capacity as such); the owner(s) and operator(s) of the Private Amenities and their successors, successors-in-title, or assigns; any builder or contractor (in their capacities as such); the golf course designer or builder; any officer, director, member, manager, or partner of any of the foregoing, or any officer, director, member or manager of any partner of the foregoing from: (1) any claim that such Private Amenity is, or must be, owned and/or operated by the Association or the Owners; and/or (2) any claim that the Owners are entitled to use any such Private Amenity by virtue of their ownership of a Lot without complying with the terms and conditions adopted by the owner of such Private Amenity.

Each Owner and the Association shall jointly and severally indemnify, defend, and hold harmless the above-named Persons, against and in respect of, and shall reimburse the above-named Persons on demand for, any and all claims, demands, losses, costs, expenses, obligation, liabilities, damages, recoveries, and deficiencies, including, but not limited to, interest, penalties, attorneys fees and disbursements (even if incident to any appeals), that any of the above-named Persons shall incur or suffer, which arise out of, result from, or relate to any claim that because a Private Amenity is deemed to be open space or a recreation area for purposes of applicable zoning ordinances and regulations, such Private Amenity must be owned and/or operated by the Association or the Owners and/or that Owner may use the Private Amenity without complying with the terms and conditions adopted by the owner of such golf course.

#### 18.6. Easements for Private Amenities.

Declarant reserves, creates, establishes, promulgates and declares for the owners and operators of any Private Amenity and their respective invitees and designees the following non-exclusive, perpetual, reciprocal, appurtenant easements which shall benefit each Private Amenity:

(a) All portions of the Community, including but not limited to Lots, that are adjacent to any Private Amenity are burdened with an easement for the purpose of doing every act necessary and proper to the playing of golf on a Private Amenity which shall include, but not be limited to, permitting golf balls unintentionally to come upon such property and for golfers at reasonable times and in a reasonable manner to come upon the exterior portions of such property to retrieve errant golf balls; provided however, if any Lot is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from any activity relating to a Private Amenity, including but not limited to, any errant golf balls

or the exercise of this easement: Declarant or Declarant's Affiliates; the Association or its Members (in their capacity as such); the owner(s) or operator(s) of the Private Amenities or their successors, successors-in-title, or assigns; any builder or contractor (in their capacities as such); the golf course designer or builder; any officer, director, member, manager, or partner of any of the foregoing; or any officer, director, member or manager of any partner of any of the foregoing.

(b) Declarant hereby reserves for itself, its successors and assigns and the owner(s) and operator(s) of any Private Amenities over, across and upon each and every Lot that abuts a Private Amenity, a 10 foot easement, as measured from the boundary line of the Lot that separates such Lot from such Private Amenity to a line running parallel thereto being located 10 feet into the interior of such Lot. Such easement may be used for the purposes of operation and maintenance of such Private Amenity, including, without limitation, installation and maintenance of cart paths and for overspray of water from the irrigation system serving the Private Amenities. By way of example and not limitation, such easement shall be for the purpose of authorizing entry onto such portions of the Lot to maintain or landscape the area encumbered by such easement. Such maintenance and landscaping shall include planting of grass, irrigation, fertilizer application, mowing and edging, and removal of any underbrush, trash, debris and trees of less than two inches in diameter. Under no circumstances shall the Association or the owner(s) or operator(s) of the Private Amenities be held liable for any damage or injury resulting from such maintenance, landscaping, overspray or other exercise of this easement.

(c) There is hereby established for the benefit of the owner or operator of any of the Private Amenities and their members (regardless of whether such members are Owners hereunder) and designees, a right and nonexclusive easement of access and use over all Roadways and shared driveways located within the Community reasonably necessary to travel between the entrance to the Community and the Private Amenities and over those portions of the Community (whether Common Area or otherwise) reasonably necessary to the use, operation, maintenance, repair, and replacement of the Private Amenities. The owners and operators of the Private Amenities and their designees shall have the right to be admitted through any gate or other measure designed to limit access, and over all such Roadways and shared driveways, after receipt of clearance from the Private Amenity, without the payment of a fee or charge for ingress or egress, provided that the number of such persons permitted entrance to the Community at any one time may be limited or otherwise restricted to the reasonable number of parking spaces available at the Private Amenity in order to avoid congestion and the unauthorized parking of vehicles.

#### 18.7. Use Restrictions.

Upon request of the owner or operator of any Private Amenity, the Association shall enforce its use restrictions and rules against any Owner or Occupant violating such regulations within such Private Amenity, including but not limited to the exercise of the Association's self-help rights for violation of sign and pet restrictions.

18.8. Limitations on Amendments.

In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any Private Amenity, may be made without the written approval of the owner(s) of the affected Private Amenity. The foregoing shall not apply to amendments made by Declarant. Notwithstanding anything contained herein to the contrary, the easements described hereinabove may not be amended or extinguished without the written consent of the owner(s) of the Private Amenities.

18.9. Jurisdiction and Cooperation.

It is Declarant's intention that the Association and the Private Amenities shall cooperate to the maximum extent possible in the operation of the Community and the Private Amenities. The Association shall have no power to promulgate any Use Restrictions or rules affecting activities on or use of the Private Amenities without the prior written consent of the owner or operator of the Private Amenity affected thereby.

**Article XIX    Changes in Ownership of Lots**

Any Owner, other than Declarant or any Declarant Affiliate, desiring to sell or otherwise transfer title to such Owner's Lot shall give the Board at least 14 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Notwithstanding the transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including, without limitations, assessment obligations, until the date upon which the Board receives such notice, after which the original Owner shall be released from the obligation to pay assessments levied after the date such notice is received.

**Article XX    Changes in Common Area**

20.1. Condemnation.

The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area. Whenever any part of the Common Area is taken by or conveyed under threat of condemnation to any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner is entitled to notice. The award made for such taking shall be payable to the Association.

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within 60 days after such taking, Members entitled to cast at least 75% of the total Class "A" votes and Declarant, during the Development and Sale Period, shall otherwise agree. Any such construction shall be in accordance with plans the Board approves. The provisions of Section 7.3 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any Common Area improvements, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

## 20.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

## 20.3. Transfer or Dedication of Common Area.

The Association may convey, dedicate, or otherwise transfer portions of the Common Area to the County or to any other local, state, or federal governmental or quasi-governmental entity, with the consent of Members representing at least two-thirds of the Class "A" votes in the Association; however, any dedication or transfer of Limited Common Areas to the County or to any other governmental entity shall also require the consent of Members representing at least two-thirds of the Class "A" votes allocated to the Lots to which such Limited Common Area is assigned.

# Article XXI Amendment of Declaration

## 21.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, to the fullest extent permitted by law, until the termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose, subject to the approval requirements set forth in Article XVI, if applicable.

Thereafter, and until termination of the Development and Sale Period, Declarant may, to the fullest extent permitted by law, unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, or VA, to make, purchase, insure, or guarantee mortgage loans on the Lots; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) for any other purpose which does not materially adversely affect title to any Lot, unless the Owner of such Lot consents to such amendment.

## 21.2. By the Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 67% of the Association's total Class "A" votes. In addition, during the Development and Sale Period, Declarant's written consent is required for any amendment. The approval requirements set forth in Article XVI also shall be met, if applicable. Except as provided in this Declaration, no Class "C" Member shall be entitled to vote on any amendment to the Declaration.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

21.3. Fair Housing Amendments Act The provisions of the Governing Documents shall be subordinate to the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.*, (hereinafter referred to as "FHAA"), and shall be applied so as to comply with the FHAA. In the event that there is a conflict between or among the Governing Documents and the FHAA, the FHAA shall prevail. Notwithstanding anything to the contrary contained herein, in the event that any provision of this Declaration conflicts with the FHAA, the Board of Directors, without the consent of the Members or of Declarant, shall have the unilateral right to amend this Declaration solely for the purpose and only to the extent necessary for bringing this Declaration into compliance with the FHAA. Furthermore, notwithstanding Section 13.2, the Board shall have the unilateral right to assign portions of the Common Area as Limited Common Area or to reassign Common Area previously assigned as Limited Common Area to one or more Lots to one or more Owner(s) or Occupant(s) should such action be required in order to make a reasonable accommodation under the FHAA.

21.4. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment, if required by applicable laws, permits and/or approvals. No action to challenge the validity of an amendment may be brought more than one year after the amendment is recorded.

Any amendment shall become effective upon the earliest of (a) actual notice; or (b) recording; provided, however, that a later effective date may be specified in any amendment. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

21.5. Exhibits.

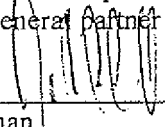
Exhibits "A," "B," "C," "D," "E," and "F" attached to this Declaration are incorporated herein.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed on the day and year written below.

**DECLARANT:**

**CENTEX HOMES**, a Nevada general partnership d/b/a Centex  
Destination Properti.

By: Centex Real Estate Corporation, a Nevada corporation,  
its managing general partner

By:   
John Lenihan  
Division President

[Corporate Seal]

Date: 8/11/03

Address: Centex Homes  
Attn: Legal Department  
385 Douglas Avenue, Suite 1000  
Altamonte Springs, Florida 32714



STATE OF FLORIDA

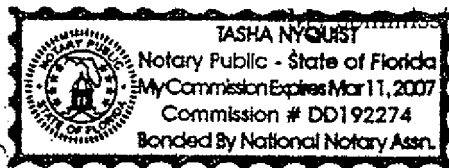
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me on this 11<sup>th</sup> day of August, 2003, by John Lenihan, Division President of Centex Real Estate Corporation, the managing general partner of Centex Homes, a Nevada general partnership, on behalf of said partnership.

Tasha Nyquist  
Notary Public

Print Name: TASHA NYQUIST

Notary Public in and for the State of Florida



[Notary Seal]

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STATE OF NORTH CAROLINA

COUNTY OF JACKSON

The foregoing Certificate of \_\_\_\_\_, a Notary Public, is certified to be correct.

This instrument was presented for registration and recorded in this office in Book \_\_\_\_\_, at Page \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2003, at \_\_\_\_\_ .m.

\_\_\_\_\_  
JOE HAMILTON, Register of Deeds

EXHIBIT "A"

Land Initially Submitted

ALL THOSE TRACTS OR PARCELS OF LAND containing 769.2 acres and designated "Parcel A" as shown on that certain plat prepared by Lindsey & Associates, Inc. dated August 28, 2002, last revised April 14, 2003, and recorded in Plat Cabinet 12, Slide 137, Jackson County, North Carolina Registry.

EXHIBIT "B"

Land Subject to Annexation

ALL THOSE TRACTS OR PARCELS OF LAND containing 692.2 acres and designated "Parcel B" as shown on that certain plat prepared by Lindsey & Associates, Inc. dated August 28, 2002, last revised April 14, 2003, and recorded in Plat Cabinet 12, Slide 138, Jackson County, North Carolina Registry.

TOGETHER WITH:

ALL THOSE TRACTS OR PARCELS OF LAND containing 617.3 acres and designated "Parcel C" as shown on that certain plat prepared by Lindsey & Associates, Inc. dated August 28, 2002, last revised April 14, 2003, and recorded in Plat Cabinet 12, Slide 139, Jackson County, North Carolina Registry.

TOGETHER WITH:

Any parcel of land located within a two-mile radius of the perimeter boundaries of the above-described property or the property described on Exhibit "A."

Note to clerk and title examiners:

This Declaration is not intended to create an encumbrance on title to the property described on this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplemental Declaration in accordance with Article IX.

## EXHIBIT "C"

### Initial Use Restrictions

The following restrictions are covenants running with the land and shall apply to all of the Community until such time as they are amended, modified, repealed, or limited pursuant to procedures of the Declaration.

1. Restricted Activities. The following activities are prohibited within the Community unless expressly authorized by, and then subject to such conditions as may be imposed by, Declarant or the Board of Directors:

(a) Parking of any vehicles on Roadways or shared driveways and parking of commercial vehicles or equipment, mobile homes, campers and similar recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than in enclosed garages, portions of the Lot that are not visible from outside of the Lot, or other areas as may be permitted by the Board, except temporarily during loading and unloading; provided, however, that construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area. For purposes of this provision, "commercial vehicles" shall be defined as any vehicle with commercial writing on their exteriors or vehicles primarily used, designed, or registered for a commercial purpose, and vehicles with advertising signage attached or displayed on such vehicle's exterior, but shall not include passenger cars with identifying decals or painted lettering not exceeding a total area of one square foot in size or official vehicles owned by governmental or quasi-governmental bodies including, without limitation, police and sheriff insignias;

(b) Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other household pets of the nature commonly sold in pet stores located within regional malls in urban areas may be permitted in a Lot; provided, however, that those pets which roam free, or, in the discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the Owner or Occupants of other Lots shall be removed by the owner thereof upon request of the Board. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling and the person walking the dog shall clean up after it. The Board may adopt additional rules clarifying the number and types of pets permitted in a Lot. Pets shall be registered, licensed, and inoculated as required by law;

(c) Any activity which emits foul or obnoxious odors outside the Lot or creates an unreasonable level of noise or other conditions which tend, in the Board's judgment, to unreasonably disturb the peace or threaten the safety of the Owners or Occupants of other Lots (this paragraph shall not preclude normal and customary use of power tools, lawn mowers, and other yard maintenance equipment during reasonable hours);

(d) Any activity which violates local, state, or federal laws or regulations; provided, however, that the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy or noisy condition to exist outside of enclosed structures on the Lot;

(f) Any noxious or offensive activity which in the determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the Owners or Occupants of other Lots;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of construction by Declarant or a person authorized to do so by Declarant;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be an unreasonable source of annoyance, as the Board may determine, to Owners or Occupants of other Lots, except alarm devices used exclusively for security purposes, provided such alarm device contains a system which causes it to shut off automatically;

(i) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in the Lake, or in any drainage ditch, stream, creek, pond, or Buffer Area within the Community, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff into such areas;

(j) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(k) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right; provided, however, that the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent;

(l) Discharge of firearms or use of explosives; provided, no Association director, officer, employee or managing agent shall have any duty to exercise self-help or to become physically involved to stop such discharge;

(m) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and for the operation of generators, lawn mowers, pool, spa and hot tub heaters, and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

(n) Any yard sale, garage sale, moving sale, rummage sale, or similar activity, except on such dates as the Board may designate for such activities to be conducted on a community-wide basis;

(o) Capturing, trapping, hunting or killing of wildlife within the Community (other than by or on behalf of the Association, Declarant or by a representative or designee of a Governmental Authority);

(p) Any activities by persons other than Declarant or its designees which materially disturb or destroy the vegetation, wildlife, Wetlands, or air quality within the Community (except as may be approved pursuant to Article IV), or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(q) Swimming, boating, use of personal flotation devices, or other active use of ponds, streams, creeks, or other bodies of water within the Community, excluding the Lake, except as may be permitted by the Association, and except that Declarant, its successors and assigns, shall be permitted to draw water from ponds, streams, creeks and other bodies of water within the Community for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association 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, streams, creeks or other bodies of water within or adjacent to the Community;

(r) Entry onto any Lot or onto any maintenance or other easement to access any pond, Buffer Area, Wetland or similar area within the Community, except that the Owner and Occupants of a Lot abutting any such area may access such area at points along the common boundary between such Owner's Lot and such area (but shall not enter onto other Lots or portions of any maintenance or other easement abutting any other Lot) and the authorized agents, employees, contractors, and designees of Declarant or the Association may enter upon any Lot or maintenance or other easement for the purpose of gaining access to any such area;

(s) Any construction, erection, placement, or modification of any structure or thing, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. This shall include, without limitation, all signs, fences, basketball hoops, swing sets and similar sports and play equipment; children's play houses; clothes hanging devices; garbage cans; woodpiles; swimming pools, spas, and hot tubs; air conditioners; tanks; solar energy devices; docks, piers and similar structures; and landscaping, hedges, irrigation and sprinkler systems, wells, septic systems, walls, mailboxes, dog runs, animal pens, or fences of any kind; satellite dishes and antennas, except that antennas, satellite dishes, and any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind may be regulated only in strict compliance with all applicable laws and regulations. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Community, should any master system or systems be utilized by the Association and require such exterior apparatus;

(i) a reasonable number of holiday and religious lights and decorations may be displayed on a Lot for up to 30 days prior to a publicly observed holiday or religious observance and up to 15 days thereafter without prior approval, subject to the right of the Association or Declarant to require removal of any such decorations which it deems to (A) be excessive in number, size, or brightness, relative to other Lots in the area; (B) draw excessive attention or traffic; (C) unreasonably interfere with the use and enjoyment of neighboring properties; or (D) cause a dangerous condition to exist. The Association shall have the right, upon five days prior written notice, to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Association, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion, or damages of any kind except intentional misdeeds and gross negligence; and

(ii) one United States flag not exceeding 36" x 60" in size may be mounted on the exterior facade of the dwelling at a location approved pursuant to Article IV of the Declaration;

(t) picketing, protest marches, sit-in demonstrations, protest speeches, or other forms of public protest or conduct, including, without limitation, displaying signs or placards on the Lot or any vehicle, apparatus or otherwise within public view in the Community, which tends to vilify, ridicule, denigrate, or impugn the character of Declarant, the Association, their respective officers, directors or employees, or any Owner or Occupant. Each Owner, by acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on such Owner's constitutional right of free speech;

(u) any activity which generates a level of noise audible to Occupants of other Lots while inside their dwellings (including, without limitation, lawn maintenance, recreational activities, games, parties, music, and other activities conducted outdoors or on porches or decks) between the hours of 11:00 p.m. and 8:00 a.m., except that during the construction of dwellings on the Lots, Declarant and builders may commence construction activities within the Community at 7:00 a.m.;

- (v) door-to-door solicitation within the Community; and
- (w) overnight camping or campfires.

2. Prohibited Conditions. The following shall be prohibited in the Community:

(a) Plants, animals, devices or other things 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;

(b) Structures, equipment, or other items on the exterior portions of a Lot which have become rusty, dilapidated or otherwise fallen into disrepair; and

(c) Owners, as well as their Occupants and pets, shall refrain from any actions which would distract from the playing qualities of any golf course adjacent to the Community. Such prohibited activities shall include, but shall not be limited to, burning materials where the smoke will cross the golf course property, maintenance of dogs or other pets under conditions which interfere with golf course play due to their loud barking or other actions, playing of loud radios, televisions, stereos or musical instruments, running, bicycling, skateboarding, walking or trespassing in any way on the golf course property, picking up balls or similar interference with play, or growing or permitting to grow varieties of grass or other vegetation which the owner of the golf course determines to be inimical to the golf course grasses or vegetation. Pets shall not be permitted on any golf course or any other portion of a Private Amenity, except as permitted by the owner of such Private Amenity. In addition, no Person shall, by virtue of this Declaration, have any right to prune or otherwise alter any landscaping located on the golf course property, or use any portion of any golf cart path system, including any portion thereof which may be situated upon Common Area, without the prior written approval of the owner of such golf course. This covenant is for the benefit of any golf course adjacent to the Community and the owner thereof and persons playing golf on said golf courses and shall be enforceable by the owner of such golf course.

## EXHIBIT "D"

### Management Company Services

The management company or agent (hereinafter the "Agent") retained by the Association shall render services and perform duties as follows:

#### ADMINISTRATION:

1. Maintain business-like relations with the Members whose service requests shall be received and completed or, after reasonable investigation, be reported to the Board with appropriate recommendations. If a complaint requires legal assistance to secure its resolution, the Board will be so informed, and no further action will be taken by the Agent until or unless the Board so authorizes.
2. Perform periodic inspections of the Community to ensure that the Community is maintained, repaired and operated in the manner more fully specified in the Governing Documents.
3. Investigate, hire, contract with, supervise and pay from the Association's funds such personnel and independent contractors as the Agent deems necessary to properly maintain, repair and operate the Community, including but not limited to, the Common Maintenance Area in the manner more fully specified in the Governing Documents. The Agent will require all independent contractors performing services for the Community to provide the Association with active certificates of insurance for workman's compensation, general liability and property damage. The Agent shall recommend to the Association qualified professionals to assist the Association and the Agent. The decision to employ and compensate professional expertise will be the responsibility of the Board.
4. Make contracts for water, electricity, gas, fuel oil, cable and satellite television, and other services to the Common Maintenance Area within the Community as the Association shall deem advisable which shall be subject to Board approval and shall be at the expense of the Association.
5. Place orders for such equipment, tools, appliances, materials and supplies as are necessary to properly maintain and repair the Community at the expense of the Association. All such contracts and orders shall be made in the name of the Association. When taking bids or issuing purchase orders, the Agent shall be under a duty to secure for the credit of the Association any discounts, commissions or rebates obtainable as a result of such purchases.
6. Cause to be placed and kept in force all forms and insurance of the type and in the amount requested by the Association or, as required by law or as required under the Governing Documents, at the expense of the Association. All of the various types of insurance coverage required will be placed with such companies, in such amounts and with such beneficial interest appearing therein, as shall be requested by the Association. The Agent shall furnish to the Board copies of all such insurance policies and report to the insurance company all reported accidents or damages related to the management operation and maintenance including any damage or destruction to the Community.
7. Maintain records in regard to the Agent's duties hereunder in a manner which is approved by the Board. Such records shall be kept in the office or a storage facility of the Agent, and shall be available for inspection by any Member during normal business hours by prior appointment. Storage of records shall be at the expense of the Association.



8. Maintain copies of the following documents, which constitute the official records of the Association, and open the records for inspection by any Member, or authorized representative of such Member, at all reasonable times, who shall have the right to make copies as may be required, subject to the applicable charges therefore:

- (a) A copy of the recorded Declaration and all amendments thereto;
- (b) A copy of the recorded By-Laws of the Association and all amendments thereto;
- (c) A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto;
- (d) A copy of the current Use Restrictions, Lake Use Restrictions and rules and regulations of the Association;
- (e) A book or books containing the minutes of all meetings of the Association, of the Board and of Members, which minutes shall be retained for a period of not less than seven years;
- (f) A current roster of all members, their mailing addresses, lot identification, and if known, telephone numbers;
- (g) All current insurance policies for the Association;
- (h) A current copy of any management agreement, lease or other contract to which the Association is a party or under which the Association or the Members have an obligation or responsibility;
- (i) Bills of sale or transfer for all property owned by the Association;
- (j) Accounting records for the Association. All accounting records shall be maintained for a period of not less than seven years. The accounting records shall include, but are not limited to:
  - (i) Accurate, itemized and detailed records of all receipts and expenditures;
  - (ii) A current account and a monthly, bi-monthly, or quarterly statement of the account for each Lot designating the name of the Members owning the Lot, the due date and amount of each assessment, the amount paid upon the account, the balance due;
  - (iii) All audits, reviews, accounting and financial reports of the Association; and
  - (iv) All contracts for work to be performed. Bids for work to be performed shall also be maintained for a period of five years; and
  - (v) Voting proxies, which shall be maintained for a period of one year from the date of the meeting for which the proxy was given.

9. Maintain an office together with a telephone so that Members or Occupants of Lots may contact the Agent or its employees on a 24 hour basis.

10. Attend, conduct and take minutes of all annual meetings of the Association and such additional Board of Directors meetings, not to exceed 12 Board meetings per calendar year. Meetings

may be held after normal working hours and on weekends to accommodate the Board's work schedule without additional charge.

11. Cooperate with the Board in preparation of the Association's annual meeting; prepare and transmit such notices, proxies and other materials at the Association's expense as may be requested.

## FISCAL

1. Submit to the Board, with Board or its finance committee assistance, proposed budgets for the operation of the Community for the ensuing fiscal year consistent with the requirements of the Governing Documents, at least 60 days before the beginning of each new fiscal year of the Association. Such budgets shall include such financial information, and/or other information as the Board requests and is reasonably necessary for the Board to review and finalize the schedule of assessments proposed for the new fiscal year and for expenditures hereunder. The Board shall furnish the Agent with the preliminary budgets as approved by the Board at least 45 days before the commencement of the fiscal year. The Agent, at the expense of the Association, shall transmit copies of the budgets to each Member of the Association in accordance with the requirements of the Governing Documents. The budgets shall constitute a major control under which the Agent shall operate, and there shall be no substantial variances therefrom, except such as may be sanctioned in writing by the Board. Any failure to meet the foregoing time frame shall be deemed a default under the management contract.

2. The Agent shall advise individual Members of the Association's authority and notice of intent to file liens against property, should a Member's account become delinquent, to protect Association's financial interest.

3. From the funds collected and deposited, cause to be disbursed regularly and punctually:

(a) All insurance premiums, charges for electrical, water, sewer, trash, cable and satellite television and similar Association services; and the amount specified by the Association for allocation to reserves, if any;

(b) Compensation to on-site labor, together with the payroll processing cost, insurance, taxes, workman's compensation, audit expense, overtime, vacation pay, holiday pay, sick pay, jury duty, group hospitalization and life insurance and such other employee benefits as the Board may approve;

(c) The Agent's compensation as set forth in the management agreement;

(d) The Agent's reimbursable expenses which, in addition to those items specifically disclosed herein, shall be itemized by the Agent and approved by the Board or a designated director;

(e) Other sums otherwise due and payable by the Association as Common Expenses authorized to be incurred under the terms of the management agreement and the Governing Documents.

4. The Agent shall furnish to the Board, no later than the first work day after the 20th day of each month, the following records and information regarding the Association:

(a) Balance Sheet;

(b) Statement of Revenues and Expenses, showing monthly and year-to-date expenditures as compared to current monthly and year-to-date budgets, or a photocopy thereof;

- (c) A list of Aged Accounts Receivable; and
- (d) Supporting schedules as provided in the software system for those statements provided in (a) and (b) above.

5. The Agent shall maintain a complete set of formal books to include a balance sheet, income statement and all ledgers. These records will be available at the office of the Agent for inspection by the Association or its Members upon request.

6. The Agent shall, on behalf of the Association, prepare, file and cause to be paid, all forms, reports and licenses required by law. At direction of the Board, the Agent shall contract for the preparation of the tax returns at the expense of the Association. At the expense of the Agent, the annual balance sheet and revenue and expense statement shall be prepared without audit for the Association. These financial reports will then be delivered to the Members within 60 days following the end of the fiscal year. The expense incurred for the distribution of this financial report to the Members will be borne by the Association. The Association, at its option and its expense, shall have the right to an independent audit or review, and the Agent agrees to cooperate with such independent auditor or reviewer.

7. Any payments to be made by the Agent under the management agreement shall be made from the accounts of the Association or as may be provided by the Association. The Agent shall not be obliged to make any advance to or for the accounts of the Association, or to pay any sum, except out of funds held or provided as aforesaid, nor shall the Agent be obliged to incur any liability or obligation for the accounts of the Association. The Association shall maintain an adequate balance in its operating account to cover current operating expenses.

8. Establish and maintain bank accounts as the agent of the Association, which accounts shall be in one or more financial institutions as directed by the Board from time to time and reflect the custodial nature thereof. Said accounts shall be for the deposit of all monies received by the Agent on behalf of the Association. Such funds shall not be commingled with the funds of the Agent or any other homeowners association or entity managed by such Agent.

(a) The Association specifically directs the Agent to draw funds on said accounts to discharge any liabilities or obligations, incurred pursuant to the management agreement, and for the payment of the Agent's compensation or reimbursements, all of which payments shall be subject to the limitations set forth in the management agreement.

(b) The Agent will place all monies in excess of current needs in interest bearing accounts or in long term obligations such as certificates of deposit as directed by the Board.

(c) The Agent shall provide the Association with a certificate of the Agent's fidelity bond coverage.

9. Upon notification by a closing agent of a pending sale, the Agent will review the Association's Governing Documents as regards required approvals and/or transfer fees. Should review of property transfers be required by Association's Governing Documents, the Agent will provide the appropriate information to the closing agent for completion. Upon receipt of required approvals, the Agent will review the property account status and prepare a certificate stating the total amount of Regular Assessments, Special Assessments, Benefited Assessments, late fees, transfer fees, etc., due to be collected at closing of title. After closing is held, the Agent will collect and deposit funds received from closing agent and update the Association's files and financial records with new owner information.

## OPERATIONS

1. If the Association specifically requests, and at the Association's expense, the Agent shall require all of the Agent's on-site personnel to prominently display sufficient identification of their employment, while engaged in such employment, on or about the Community.

2. The Agent shall cause the Common Maintenance Areas which are to be maintained by the Association under the Governing Documents to be maintained according to the standards acceptable by the Association, subject to limitations imposed by the budgets, the Governing Documents, the Association and those contained in the management agreement. The Agent shall inspect the Community at least weekly to ensure that all maintenance is being performed in a timely manner and that Members are complying with the rules.

3. For any one item of repair or replacement, the expense shall not exceed the budgeted amount, unless specifically authorized in writing by the Board. However, if such repairs manifest danger to life and/or the property, or for the safety of the Members or Occupants of Lots or are required to avoid the suspension of any necessary service to the Community, emergency repairs may be made by the Agent, irrespective of the cost limitation imposed by the management agreement. Notwithstanding this authority as to emergency repairs, it is understood and agreed that the Agent will, if reasonably possible, confer with the designated person of the Association regarding such expenditure.

4. Take such action as may be necessary to cause compliance with any and all orders or requirements affecting the Community placed thereon by any federal, state, county, municipal or other governmental or regulatory authority having jurisdiction thereover, and the orders of the Board of Fire Underwriters or other similar bodies, subject to the limitation of the budgets or direction of the Board. The Agent shall notify the Association within two working days of all such notices and orders.

5. It shall be the duty of the Agent at all times during the term of this Agreement to operate and maintain the Community according to standards consistent with the overall plan of the Association. The Agent shall see that all Members are informed with respect to such rules, regulations and notices as may be promulgated from time to time by the Board of the Association.