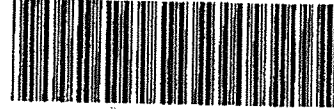


FOR REGISTRATION REGISTER OF DEEDS
 Judy D. Martin
 Moore County, NC
 December 02, 2008 02:15:26 PM
 Book 3493 Page 516-549
 FEE: \$113.00
 INSTRUMENT # 2008018279



INSTRUMENT # 2008018279

Prepared by and return to Stephen F. Later, Robbins May & Rich LLP, 120 Applecross Road, Pinehurst, North Carolina 28374
 No Title Examination Performed

Brief Description for Index: Declaration of Covenants/Arboretum

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS
 FOR THE ARBORETUM

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR THE ARBORETUM is made as of the date on which it is recorded in the Moore County Registry (hereinafter the "Effective Date") by Global Properties and Development, L.L.C., a North Carolina limited liability company, (hereinafter "Declarant").

WITNESSETH

WHEREAS Declarant owns approximately 81.96 acres of real property situate in Moore County, North Carolina, pursuant to instrument recorded in Book 3045, Page 179, Moore County Registry, that Declarant intends to develop into a planned community to be known as The Arboretum (hereinafter the "Planned Community");

WHEREAS Declarant desires to establish a general plan and uniform scheme of development and improvement of the Planned Community and to impose certain covenants, conditions, restrictions, easements, charges and liens upon the Property and further desires to provide for the maintenance and upkeep of certain Common Area (as hereinafter defined) within the Planned Community, to provide for maintenance of certain storm water drainage systems and facilities within the Planned Community, and to provide for the enforcement of covenants and restrictions applicable to the Planned Community, and, to that end, desires to subject the Properties (as hereinafter defined) to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Properties and each Owner of any portion thereof; and

WHEREAS The Arboretum Property Owners Association, Inc. has been incorporated under the North Carolina Nonprofit Corporation Act to carry out these functions.

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit A to this Declaration, and such additions thereto as may be hereafter made pursuant to the provisions of Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, hypothecated or encumbered, leased, improved, used, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, each and all of which (a) shall run with the real property and be binding on all Persons owning any right, title or interest therein or any part thereof (whether legal, equitable or beneficial) their respective heirs, personal representatives, successors and assigns, (b) shall inure to the

THIS DOCUMENT REGULATES THE DISPLAY OF POLITICAL SIGNS

benefit and be binding upon each Owner thereof, and (c) are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Planned Community and of each of the Lots.

**ARTICLE I
DEFINITIONS**

The following terms, when used in this Declaration, shall have the meaning set forth below. Capitalized terms not specifically defined in this Article I shall have the meaning of such term as set forth in the Act and the North Carolina Nonprofit Corporation Act or in any other provision of this Declaration.

Section 1. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, the North Carolina Planned Community Act.

Section 2. "Additional Property" shall mean and refer to all real property subjected to this Declaration, by any of the methods set forth in Article II hereof, after the initial recording of this Declaration.

Section 3. "Association" shall mean and refer to The Arboretum Property Owners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Section 4. "Attorneys Fees" shall mean and refer to a reasonable fee for the service of attorneys employed for any purpose related to this Declaration including, without limitation, consultation, drafting documents, sending notices or instituting, prosecuting or defending litigation or arbitration as well as litigation costs and expenses and fees for the services of experts.

Section 5. "Board of Directors" and "Board" (the terms being used interchangeably) shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association and is the "Executive Board" as defined in the Act.

Section 6. "Bylaws" shall mean and refer to the Bylaws of the Association, as they may now or hereafter exist, including all duly adopted amendments thereto.

Section 7. "Code" shall mean and refer to the Town of Southern Pines Code of Ordinance, North Carolina, including all rules, regulations and policies lawfully adopted pursuant thereto, and including all amendments, supplements and replacements thereof enacted from time to time.

Section 8. "Common Area" shall mean and refer to (a) all real property and improvements thereon owned in fee, leased or used by the Association for the common use, enjoyment or benefit of the Members or the Properties and (b) all rights and easements of the Association in, on, under, over and through any real property not owned in fee by the Association, together with all improvements on such real property that are owned or maintained by the Association, each such easement or right also being referred to herein as a "Common Area Easement". Common Area Easements are included within the definition of Common Area, even though Common Area Easements may sometimes be referred to separately herein. Common Area Easements may include portions of public street rights-of-way or other property owned by or dedicated to a governmental entity, and may include, without limitation, signs, landscaping and other improvements. This definition of Common Area also includes Limited Common Area. "Common Property" shall mean and refer to Common Area and all personal property owned, leased or used by the Association, or with respect to which the Association has a financial obligation, for the common use, enjoyment or benefit of the Members or the Properties. Common Property shall be maintained by the Association unless dedicated to public use and accepted by a public agency, authority or utility or conveyed to another nonprofit entity formed for similar purposes. Common Area also includes all other property and improvements, if any, required to be included as such by the Code or other Legal Requirement, and all other property and improvements, if any, declared to be Common Area by this Declaration or by the Declarant or the Association. **DECLARANT IS NOT AND SHALL NOT BE OBLIGATED, NOTWITHSTANDING ANY OTHER INSTRUMENT OR PLAT OR ANY REPRESENTATIONS, NOTATIONS OR DEPICTIONS THEREON, TO ERECT THE "FUTURE COMMUNITY CENTER" (AS SHOWN ON PLATS RECORDED IN PLAT CABINET 13 AT SLIDE 845 AND**

IN PLAT CABINET 13 AT SLIDE 906-907 OF THE MOORE COUNTY REGISTRY) OR SIMILAR IMPROVEMENTS.

Section 9. "Common Expenses" shall mean and refer to (a) all expenses of maintenance of Common Area, including repair, restoration and replacement thereof, and including monies allocated to reserve funds, (b) ad valorem taxes and public assessments, if any, levied against the Common Area or other assets owned in fee by the Association (but specifically excluding ad valorem taxes on real property on, under or over which the Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or maintained therein by the Association result in additional ad valorem taxes on such real property that would not be assessed in the absence of such improvements), (c) premiums for hazard, liability and other insurance insuring the Common Property or the Association, its officers, directors and employees, if any, (d) fees and expenses of attorneys, accountants, and other Persons employed by the Association for Association business, (e) expenses declared to be or described as Common Expenses by the Act, the Code or this Declaration, including expenses for Stormwater Control Measures, (f) expenses determined by the Board or by the Members to be Common Expenses, and (g) all other expenses incurred by the Association in performing its functions, including operating, management and administrative expenses.

Section 10. "Declarant" shall mean and refer to Global Properties and Development, L.L.C., a North Carolina limited liability company. It shall also mean and refer to any Person to whom or which Declarant might assign or delegate all or any of the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Registry.

Section 11. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors and officers of the Association. The Declarant Control Period shall terminate upon the earlier to occur of (a) December 31, 2018; (b) the date on which Declarant no longer owns any portion of the Properties or (c) relinquishment or transfer by Declarant of all Special Declarant Rights as provided in Section 3-104 of the Act.

Section 12. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for the Arboretum and all amendments hereto and supplements hereof.

Section 13. "Dwelling", "Dwelling Unit" and "Unit" shall mean and refer to any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the Owner thereof or by tenants or lessees of the Owner, and specifically including detached dwellings located on separate Lots, attached dwellings located on separate Lots (for example, townhomes, in which more than one Dwelling may be located in a single building, but each Dwelling is on a separate Lot. A detached or attached Dwelling shall be deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor.

Section 14. "Improvements" shall mean and refer to any and all (a) structures of any kind including, but not limited to, any building, fence, wall, sign, paving or pool, (b) grading, and (c) exterior additions, alterations, and improvements.

Section 15. "Legal Requirements" shall mean and refer to any federal, state, local, municipal, foreign or international, multinational other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any (a) nation, state, county, city, town, borough, village, district or other jurisdiction, (b) federal, state, local, municipal, foreign or other government, (c) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers), (d) multinational organization or body, (e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power or (f) official of any of the foregoing.

Section 16. "Limited Common Area" shall mean and refer to all Common Area, together with any improvements thereon, owned, leased, used or maintained by the Association for the benefit of fewer than all

of the Members or less than all of the Properties, and which has been designated as such by the Declarant or the Association. Limited Common Area may include, for example, private alleys and storm water drainage facilities serving less than all of the Properties. "Limited Common Property" shall mean and refer to all Common Property owned, leased, used or maintained by the Association for the benefit of fewer than all of the Members or less than all of the Properties, and which has been designated as such by the Declarant or the Association.

Section 17. "Limited Common Expense" shall mean and refer to all expenses of the type included within the term "Common Expense" but which are related solely and specifically to Limited Common Property. Limited Common Expenses shall be paid out of assessments levied only against the portions of the Properties benefited by Limited Common Property.

Section 18. "Lot" shall mean and refer to any portion of the Properties with delineated boundary lines, as shown on a plat recorded in the Registry or as identified by metes and bounds description, that is intended for construction of a Dwelling thereon, or on which a Dwelling has been constructed. A Lot intended to be used for construction thereon of a detached or attached Dwelling shall become a Lot upon recording in the Registry of a plat creating such Lot. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through the recording of a new plat, the newly platted lot thereafter shall constitute a Lot.

Section 19. "Member" shall mean and refer to every Person who or which holds membership in the Association.

Section 20. "Owner" shall mean and refer to the record owner, whether one or more Persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding contract purchasers and trustees and secured parties having an interest in a Lot solely as security for the performance of an obligation.

Section 21. "Person" shall mean and refer to any natural person or, whether public or private, corporation, division of a corporation, firm, joint venture, limited liability company, series of a limited liability company, partnership, association, enterprise, company, estate, unincorporated organization or other entity.

Section 22. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant to Article II.

Section 23. "Registry" shall mean and refer to the office of the Register of Deeds for Moore County, North Carolina, or any successor office in which deeds, plats, easements, mortgages and deeds of trust are recorded. Any reference herein to a plat or document being recorded refers to such plat or document being recorded in the Registry.

Section 24. "Rules and Regulations" shall mean and refer to those rules and regulations governing the use of the Properties adopted by the Board, as amended thereby from time to time and at any time, pursuant to, inter alia, Section VI of Article XI.

Section 25. "Special Declarant Rights" shall mean and refer to all rights (granted to, or reserved by, or established for the benefit of, Declarant in this Declaration, the Articles of Incorporation and Bylaws (whether or not such rights are referred to as Special Declarant Rights in such documents) and the Act. Declarant may assign Special Declarant Rights, in whole or in part, temporarily or permanently, at any time and from time to time, subject to such terms and conditions as Declarant specifies in the assignment document. Except as specifically provided herein, any assignment of Special Declarant Rights must be in writing and recorded in the Registry, and the assignment becomes effective upon the recording of the document in the Registry or on any later date specified therein.

Section 26. "Stormwater Agreement" (which term includes any other agreement, maintenance manual or other document, by whatever name, relating to Stormwater Control Measures) shall mean and refer to any agreement required by the Code between or among any combination of the Town, the Declarant, the Association, and one or more Owners, relating to maintenance of Stormwater Control Measures.

Section 27. "Stormwater Control Measures" shall mean and refer to anyone or more of the following that serves or benefits any part or all of the Properties or is required by the Code or other Legal Requirement in connection with any part or all of the Properties, whether located in the Properties or outside of the Properties (a) storm water drainage easements (also referred to herein as "storm water easements" or "drainage easements") that are shown on plats of the Properties recorded in the Registry or established by written instruments recorded in the Registry, and which either are located on the Common Area or benefit or serve more than one (1) Lot and (b) storm water management facilities for the Properties, including ponds, man-made or natural areas or planted or landscaped areas into which storm water drains, or in which storm water is collected or from which it is discharged, drains, pipes, conduits, inlets, channels, dams, ditches, filter, buffers, bio-retention areas, and other equipment, facilities and storm water management measures used for inspecting, monitoring, measuring, collecting, controlling, transporting, conveying, handling, storing, discharging and managing storm water. Except as otherwise provided herein, Stormwater Control Measures are part of the Common Area or Limited Common Area, as applicable, and maintenance of Stormwater Control Measures is a Common Expense or Limited Common Expense, as applicable. References in the Declaration to storm water management include all applicable Stormwater Control Measures and Stormwater Agreements.

Section 28. "Town" shall mean and refer to the Town of Southern Pines, North Carolina, a municipal corporation.

**ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE
ASSOCIATION**

Section 1. Existing Property. The real property which, at the time of recording of this Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on Exhibit A attached hereto.

Section 2. Additions to Existing Property.

(a) By Declarant. At any time during the Declarant Control Period, Declarant may annex Additional Property to this Declaration, without approval of any Person other than the Town (if required by the Legal Requirements), by recording a "Supplemental Declaration" extending the operation and effect of this Declaration to such Additional Property. Except to the extent required by the Legal Requirements, nothing in this Declaration shall be deemed to require the Declarant to annex any Additional Property. Such property must be contiguous to property already subjected to this Declaration (or separated from such property only by the right-of-way of a street or road.) The addition of such property pursuant to this Section 2 may increase the cumulative number of Lots within the Properties, and therefore, may alter the relative maximum voting strength of the various types of Members.

(b) By the Members. If a Person other than the Declarant desires at any time to subject Additional Property to the Declaration, such Additional Property may be annexed only by the affirmative vote of at least sixty-seven percent (67%) of the votes cast by the Members present at a duly-called meeting of the Members of the Association for which the notice of meeting includes notice of the proposal to annex such Additional Property, or by written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and, after such approval, the recording in the Registry of a Supplemental Declaration signed by the owner of such Additional Property and by the appropriate officer(s) of the Association certifying the required meeting and vote. In addition to the foregoing, during the Declarant Control Period, such annexation may be valid only with the consent of Declarant, as evidenced by Declarant's execution of the Supplemental Declaration.

(c) Approval by Governmental Entities. Annexations of Additional Property to the Declaration must be approved (i) by the Town, if required by Legal Requirements, and (ii) by FHA or VA, if at the time of such annexation FHA or VA regulations require such approval.

(d) Supplemental Declaration. Each Supplemental Declaration shall be effective to annex Additional Property only upon obtaining all required approvals and upon its recording in the Registry, and the

effective date of such annexation shall be the later of the date specified therein, if any, or the date of recording. Each Supplemental Declaration shall describe the Additional Property annexed and indicate that the Additional Property is being subjected or annexed to the Declaration. A Supplemental Declaration need not be in any specific form and need not be titled Supplemental Declaration (for example, the required subjecting language may be contained in a deed from the Declarant conveying the Additional Property being annexed), but it shall indicate clearly the intention to subject or annex such Additional Property. Any Supplemental Declaration may contain such use restrictions and such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens applicable to such Additional Property, not in conflict with this Declaration, as the Person annexing such Additional Property to the Declaration may determine, but this Declaration shall control over any provision of any Supplemental Declaration that conflicts or is inconsistent with this Declaration.

(e) Votes Allocated to Additional Property. The votes of the Members in the Additional Property shall be allocated in the same manner that votes are allocated in portions of the Properties already subject to the Declaration. The addition of such property pursuant to this Section 2 may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Section 3. Conveyance of Common Area in Additional Property. Common Area, if any, located within any Additional Property, or the applicable phase or portion thereof, shall be conveyed to the Association pursuant to the requirements of Section 3 of Article IV of this Declaration.

Section 4. Withdrawal of Properties from the Declaration.

(a) Withdrawal. Subject to Legal Requirements, at any time during the Declarant Control Period, the Declarant, in its sole discretion, without the approval or joinder of the Association, any Owner or any other Person except the Owner (if not Declarant) of the portion of the Properties being withdrawn, may record in the Registry a "withdrawal declaration" to withdraw one or more portions of the Properties from the Declaration. All portions of the Properties withdrawn from the Declaration shall be identified in the withdrawal declaration either by a plat recorded in the Registry or by a metes and bounds description. The withdrawal shall be effective on the date the withdrawal declaration is recorded in the Registry, or on such later date (if any) specified therein. All such withdrawals also must be approved (i) by the Town, if required by Legal Requirements, and (ii) by FHA or VA, if, at the time of such withdrawal, FHA or VA regulations require such approval.

After the end of the Declarant Control Period, and subject to Legal Requirements, at any time and from time to time one or more portions of the Properties may be withdrawn from the Declaration upon approval by the Owner of such portion of the Properties and by the affirmative vote of at least sixty-seven percent (67%) or more of the votes cast by the Members present at a duly-called meeting of the Members for which the notice of the meeting includes notice of the proposal to withdraw such portion of the Properties from the Declaration, or by written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Property Owners Association are allocated. All such withdrawals also must be approved (i) by the Town, if required by Legal Requirements, and (ii) by FHA or VA, if, at the time of such withdrawal, FHA or VA regulations require such approval.

Following approval of any such withdrawal, the Association and the Owner of the portion of the Properties to be withdrawn from the Declaration shall record a withdrawal declaration particularly describing the withdrawn portions of the Properties by reference to a plat recorded in the Registry or by a metes and bounds description. The withdrawal shall be effective on the date the withdrawal declaration is recorded in the Registry, or on such later date (if any) specified therein.

(b) Effect of Withdrawal. Any portion of the Properties that is withdrawn from the Declaration maybe owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged and

developed in any manner allowed under Legal Requirements, and shall be released from the terms and provisions of the Declaration on the date the withdrawal becomes effective as provided herein, except that all easements specifically affecting such withdrawn portions of the Properties, as shown on plats or documents recorded in the Registry, shall remain effect unless released or terminated by all Persons having rights to exercise such easements.

Section 5. Community Declaration. Within the Properties there may be certain separate and distinct phases, sections, or neighborhoods. Because such phases, sections or subdivisions may have varying Lot sizes, types of Dwelling Units, marketing considerations and other differences, it may be necessary or desirable to impose additional and different covenants and restrictions on such phases, sections or subdivisions which are applicable solely to such phase, section or subdivision (the foregoing being referred to herein as a "Community Declaration"). Accordingly, the Declarant or other Person who owns any such phase, section or subdivision of the Properties may subject such phase, section or subdivision to such Community Declarations as the Declarant or other Person, in his, her or its sole discretion, may from time to time determine, provided, however, that, during the Declarant Control Period, no Person other than the Declarant may subject any phase, section or neighborhood within of the Properties to any Community Declaration unless the Declarant consents in writing thereto by executing such Community Declaration. More than one phase, section or neighborhood may be subjected to the same Community Declaration. Any Community Declaration may do anyone or more of the following: (a) create and regulate the use of and assessments for Limited Common Area, (b) establish minimum building setback distances and minimum Dwelling square footage requirements for such phase, section or subdivision that are more or less than the minimum building setback distances and minimum Dwelling square footage requirements, if any, that are specified in the Declaration, and (c) specify such use restrictions and may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not inconsistent with the Declaration, as the Person subjecting such real property to the Community Declaration may determine (provided, however, the provisions of the Declaration control over any conflicting provisions of any Community Declaration). Except for the foregoing matters that may be different in a Community Declaration from the requirements in the Declaration, the Declaration shall control over any provision of any Community Declaration that conflicts or is inconsistent with the Declaration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Declarant and every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two (2) classes of membership with respect to voting rights:

- (a) **Class A Members.** Class A Members shall be the Owners of all Lots except the Class B Member (as hereinafter defined). Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots". When more than one Person owns an interest (other than a security interest) in any Class A Lot, all such Persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine, but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot.
- (b) **Class B Member.** The Class B Member shall be the Declarant. Lots owned by the Class B Member shall be "Class B Lots". Subject to the provisions of this Section 2(b), Declarant shall be entitled to ten (10) votes for each Lot that it owns. Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such Declarant-owned Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 3. Declarant's Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant

may, in its discretion appoint and remove all of the Directors and offices of the Association. Declarant's intent to exercise or continue to exercise that right shall be set forth in the notice of each annual meeting of the Members.

Section 4. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his own personal living quarters or if any Dwelling within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant or rental Units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association. This Section 4 applies only to Lots and Dwellings owned by a Class A Member and specifically excludes Lots and Dwellings owned by the Declarant.

ARTICLE IV PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV and by the Rules and Regulations, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.
- (b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use Common Area and facilities thereon for any period during which any assessment against the Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any violation of this Declaration, any other covenants applicable to the Properties, and the Rules and Regulations; provided, however that the Association may not suspend an Owner's right to use of any Common Area providing access or utilities to his Lot.
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes of the Association agree to such dedication, sale or transfer, provided that this Section 1(c) shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.
- (d) the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the Association, to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.
- (e) the right of the Association to exchange all or part of the Common Area for other property and consideration provided that:
 - (i) written notice of the exchange is given to each Member of the Association, except in cases where the exchange is done to eliminate an encroachment;

- (ii) after the notice is given, the exchange is approved by a majority of the Members present and voting at a meeting of the Members duly called for the purpose of approving such exchange, provided, however, that Member approval shall not be required if the sole purpose of the exchange is to eliminate an encroachment;
- (iii) the exchanged properties and other considerations are of like value and utility;
- (iv) the acreage and configuration of the remaining open space (including real property to be received by the association in such exchange) equals or exceeds the requirements of the Code or of the Town; and
- (v) the exchange is approved by the Town, if required.

Section 2. Delegation of Use.

- (a) **Family.** The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article IV may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Moore County, North Carolina.
- (b) **Tenants.** The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article IV may be delegated by such Owner to the tenants or contract purchasers who occupy such Owner's Unit, or a portion thereof, as their principal residence in Moore County, North Carolina.
- (c) **Guests.** The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article IV may be delegated to guests of such Owners, tenants or contract purchasers, subject to the Rules and Regulations.

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that it will convey to the Association title to those portions of the Common Area to be owned in fee by the Association. Declarant hereby reserves and grants (regardless of whether or not such reservation and grant is specifically set forth in such deed), for itself and its successors and assigns, an easement over, under, across and through the Common Area so long as it owns any Lot within the Properties, for the purpose of constructing any improvements on the Common Area or the Lots as it or they deem necessary or advisable. Except as otherwise stated herein, all conveyances by the Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Planned Community, utility, drainage, greenway and other easements of record or shown on the recorded plats of the Planned Community, and the lien of ad valorem taxes not yet due and payable. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and maintained by the Town or other governmental entity, or a public or private utility company.

Section 4. Regulation and Maintenance of Common Area and Common Area Easements. It is the intent of Declarant that the Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Properties. To that end, the Declarant, by recording any plat or map of any phase or section of the Properties, grants to the Association an easement over and across any portion of any Lot within such phase or section on which a Common Area Easement lies for the purpose of enabling the Association to take any action permitted by Section 4(b) and Section 4(c) of this Article IV.

- (a) **Rights and Responsibilities of the Lot Owners.** Each Owner of a Lot upon which a Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area Easement. Notwithstanding any other provision of this Declaration, no Owner or other Person shall, without the prior written consent of the Association (i) remove any trees or vegetation

from any Common Area, (ii) erect gates, fences, buildings or other structures on any Common Area, (iii) place any garbage receptacles on any Common Area, (iv) fill or excavate any Common Area or portion thereof or (v) plant vegetation on or otherwise restrict or interfere with the use, maintenance and preservation of the Common Area. It is the intent of the Declarant that a Common Area Easement be maintained in the same state as when the Lot upon which such easement lies was conveyed to an Owner (other than the Declarant), except for changes authorized in writing by the Declarant or the Association. If an Owner of a Lot on which a Common Area Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner for the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be deemed a limited special assessment against such Owner's Lot and shall be collected in and shall incur the late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

- (b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall (a) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Declaration and the Rules and Regulations and to assess the appropriate Owners as necessary to recover the costs of such maintenance, repair, or replacement, (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damages suffered by any Person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Property, and (iii) pay all property taxes and other assessments levied against the Common Property owned in fee by the Association.
- (c) Association's Right of Entry. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area Easement, and any other portion of the Lot to the extent reasonably necessary to gain access to and maintain the Common Area Easement and any improvements therein, including maintenance to be done by the Owner as provided in Section 4(a) of this Article IV, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

**ARTICLE V
COVENANT FOR ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the annual assessments, special assessments, and limited special assessments to be established and collected by the Association as provided herein. All assessments which are unpaid when due, together with interest and late charges set forth in Section 7 of this Article V and all costs of collection, including, without limitation, Attorneys' Fees, shall be the personal obligation of such Owner and a charge on the Lot of such Owner, and, as provided in Section 3-116 of the Act, shall be a continuing lien against the Lot against which such assessment is made. As provided in Section 3-116 of the Act, such lien shall attach to the Lot only if an assessment against the Lot remains unpaid for at least thirty (30) days and a claim of lien is filed by the Association as provided in the Act. Each such assessment or charge, together with interest and costs of collection, including Attorneys' Fees, shall also be the personal or corporate obligation of the Owner of such Lot at the time when the assessment fell due, but such personal or corporate obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them, however, such assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made. Any monetary fines imposed against an Owner shall be a limited special assessment against the Lot of such Owner.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents of the Planned Community and, in particular, for (a) acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Property, (b) maintenance, repair and reconstruction of the Common Area and improvements thereon including, without limitation, Storm Water Control Measures, storm water drainage facilities thereon, and including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof, (c) payment of assessments, if any, levied against the Association by the Association, (d) payment of taxes and public assessments levied against Common Property owned in fee by the Association, (e) procurement of insurance, (f) employment of attorneys, accountants, management agents and other Persons for Association business, (g) payment of principal and interest on funds borrowed by the Association, and (h) such other needs as may arise.

Section 3. Maximum Annual Assessment. Declarant shall, not later than December 31, 2008, set the Maximum Annual Assessment for each Class A Lot, and, beginning on January 1, 2008 and on January 1 of each year thereafter, the Maximum Annual Assessment for Class A Lots shall automatically be increased by ten percent (10%) of the Maximum Annual Assessment for the previous calendar year unless the Board adopts a lesser increase of the Maximum Annual Assessment. The Maximum Annual Assessment for Class B Lots shall be zero.

Section 4. Date of Commencement of Annual Assessments; Budgets; Amount of Assessments; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month after the Lot is subjected to this Declaration.

- (a) **Budget.** The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board shall send a copy of the proposed budget to the Members and shall give the Members written notice of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless, at that meeting, Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the proposed budget provides for annual assessments not more than ten percent (10%) greater than the annual assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board. Notwithstanding the foregoing, however, no ratification vote is required for the initial budget.
- (b) **Assessments.** Subject to the provisions of this Section 4(b), the Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment then in effect. Unless a lower amount is set by the Board, the initial annual assessment shall be the Maximum Annual Assessment set forth in Section 3 of this Article V and shall be prorated according to the number of months remaining in the calendar year; provided, however, that, notwithstanding any other provision of this Declaration, the annual assessment for Class B Lots shall always be zero. Annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannual, quarterly or monthly basis, as determined by the Board.
- (c) **Notice.** Subject to the provisions of this Section 4(c), at least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto.



- (d) Certificates. The Association shall, upon demand and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or the management company employed by the Association, setting forth whether the assessments for a specific Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other nonrecurring cost, provided that any such assessment shall have the assent of not less than two-thirds of the Members present and voting at a meeting of the Members called for, either solely or among other things, for the purpose of voting on a special assessment, and further provided that the special assessments for Class B Lots shall always be zero. Special assessments shall be fixed at a uniform rate for all Lots within each Class and maybe collected on a yearly, semiannually, quarterly or monthly basis, as determined by the Board of Directors.

Section 6. Limited Special Assessments. The Board of Directors, without vote of the Members, may levy a limited special assessment against any Lot, applicable only to that Lot, for expenses incurred by the Association with regard to such Lot including, without limitation, expenses incurred under Article VI hereof. Any fine imposed against an Owner pursuant to Section 14 of this Article V and Section 3 shall also constitute a limited special assessment against such Owner's Lot. Special assessments and limited special assessments shall constitute a lien to the same extent as other annual assessments against the Lot.

Section 7. Notice of Quorum for any Action Authorized Under Section 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 5 of this Article V shall be sent to all Members not less than ten (10) days nor more than sixty (60) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If, however, a quorum is not present or represented at any meeting, the Members or their proxies present and entitled to vote thereat shall the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or be represented. The quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of quorum. The quorum requirement shall continue to be reduced to fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 8. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at a rate established by the Board of Directors from time to time, but in no event shall such rate be greater than eighteen percent (18%) per annum or the maximum rate allowable by applicable Legal Requirements, whichever is less. The Association may file a claim of lien in the Office of the Clerk of Superior Court of Moore County against the Lot once an assessment levied against it has remained unpaid for a period of thirty (30) days or longer. The Association may foreclose the claim of lien in the same manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes (pursuant to which the Association may appoint a trustee or commissioner for the purposes thereof) except, to the extent so limited under applicable Legal Requirements, that the Association may not foreclose under the power of sale provided in Article 2A of Chapter 45 if the assessment lien consists solely of fines imposed by the Association, interest on unpaid fines, or Attorneys' Fees solely associated with fines imposed by the Association, or, if the assessment lien consists solely of fees resulting from an attempt to collect a service, collection, consulting or administration fee.

Section 9. Subordination of the Lien to Mortgages. The liens provided herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust shall extinguish the lien of any assessments which become due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments

thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 10. Exempt Property. All portions of the Properties included within (a) Common Area, (b) property owned by, or dedicated to and accepted by the Town or a public utility, including property within the rights-of-way of publicly dedicated streets and roads, and (c) property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina, provided however, that any property containing a Dwelling used as a residence shall not be Exempt Property. Exempt Property shall not be subject to the assessments provided for herein, and the Owner of such Exempt Property shall have no voting rights in the Association based on ownership of such Exempt Property. Furthermore, unless and until such time, if any, as it loses its Exempt status, all Exempt Property owned by the Town or a utility provider, and all Exempt Property within publicly dedicated street rights-of way, shall be exempt from all of the provisions of the Declaration, except for any easement such Exempt Property reserved in the Declaration by or for the Declarant, the Association, the Town or any other Person. Exempt Property that loses its status as Exempt shall be reclassified as a Lot as appropriate and shall be subject to all the terms and provisions of the Declaration in the same manner and extent as other Lots.

Section 11. Working Capital Fund. At the time of closing of the initial sale of each Dwelling constructed on a Lot, a sum of equal to one-sixth (1/6) of the annual assessment for Class A Lots in effect as the time of such sale shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet its operating expenses or to acquire additional equipment or services deemed by the Board to Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section 11 shall not be considered as an advance payment of any regular assessment.

Section 12. Declarant's Obligation to Fund Operating Deficits. During the Declarant Control Period, Declarant shall be obligated to fund any deficit between the normal operating expenses of the Association and the monies received by the Association from the Owners from assessments. Declarant, at its option, may pay such expenses directly to the Person providing the services or materials or pay to the Association the amounts necessary to fund the operating deficit. Any monies paid at any time or by the Declarant for or on behalf of the Association shall be credited against past or future assessments due from the Declarant.

Section 13. Neighborhood Assessments. Notwithstanding any other provision of this Declaration, the Association shall have the power to levy, in addition to all other assessments that may be levied as provided herein, assessments (deemed to be limited special assessments) against the Lots in a particular phase, section or neighborhood (hereinafter a "Neighborhood") to fund actual and estimated expenses incurred by the Association for the primary benefit of the Lots within such Neighborhood including, without limitation, maintenance required to be performed by the Association with respect to property within that Neighborhood. The Association shall levy Neighborhood Assessments within a Neighborhood as provided in the Supplemental Declaration annexing the Additional Property or an applicable Community Declaration or upon the written request of Owners of at least two-thirds (2/3) of the Lots within that Neighborhood.

Section 14. Reserve Account. The Association shall establish a separate reserve account to fund major repairs to and replacements of Common Property including, without limitation, replacement of personal property falling within the category of Common Property, repair of the recreational amenities within the Properties, major repair or replacement of Stormwater Control Measures. Each annual budget shall show the amount to be placed in reserve for each category for which reserves are to be held.

Section 15. Fines. Subject to the provisions of this Declaration, the Bylaws of the Association, and Section 3-107.1 of the Act, the Board of Directors shall have the right and authority to levy fines or suspend privileges or services provided by the Association for reasonable periods for the violation of any provision of this Declaration and the Rules and Regulation; provided, however that the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Rules and Regulations. Any monetary fine shall be deemed a limited special assessment against the Lot of the Owner against whom such fine is assessed.

ARTICLE VI
MAINTENANCE OF LOTS AND COMMON AREA

Section 1. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Each Owner shall keep his Lot and Dwelling in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements which the Association is responsible for maintaining as provided in this Declaration. If an Owner does not make any repair or perform any maintenance required of such Owner, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Dwelling erected thereon, and the cost of such maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 3 of this Article VI. Prior to such entry, the Association shall give written notice to the Owner stating (a) the specific items needing maintenance, (b) the corrective action to be taken, (c) a time, not less than fifteen (15) calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance, and (d) a statement that, if the Owner fails to perform the maintenance within such period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article VI.

Section 2. Maintenance by the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall (a) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Declaration or the Rules and Regulations, (b) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any Person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area, and (c) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

Section 3. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in Section 1 of this Article VI, the cost of any such maintenance, replace or repairs (including the administration fee) shall be a limited special assessment against the Lot upon which such maintenance is done and shall be added to and become a limited special assessment against such Lot.

Section 4. Stormwater Management. Except for maintenance responsibilities (a) placed on Owners by the Declaration or Legal Requirements or (b) assumed or undertaken by other Persons, the Association shall maintain the Stormwater Control Measures as part of the Common Expenses. As used in the immediately preceding sentence, the word "maintain" includes a provision for maintenance of (which may include financial contributions toward maintenance of) Stormwater Control Measures located on or shared with other properties not subject to the Declaration. Such maintenance obligations shall terminate, or be reduced proportionally, temporarily or permanently as applicable, at such time as the Town accepts responsibility to maintain, in whole or in part, the Stormwater Control Measures for the Properties, or some other Person is providing the necessary maintenance therefor. Following any such assumption of maintenance by the Town or other Person, the Association may, without obligation, continue to provide maintenance to the extent that, in the opinion of the Board, the Town or other Person fails to provide adequate maintenance, and shall continue to provide maintenance for those portions of the Stormwater Control Measures with respect to which the Town or such other Person has not assumed maintenance responsibility, or following termination of the Town's or such Person's maintenance responsibility. The Owner of any Lot on, over or through which any Stormwater Control Measures are located shall be responsible for (c) mowing of grass with reasonable frequency, where applicable, unless the Association assumes such responsibility and (d) removal of debris and other materials to the best of the Owner's ability, where such debris or materials has impeded or threatens to impede the free flow of stormwater on, over or through the Stormwater Control Measures located on the Lot. Such Owner's responsibility shall include notification of the Association of any defects in any fencing surrounding or within any such Stormwater Control Measures, any debris or other matter which the Owner reasonably believes is beyond the Owner's ability to remove, and any excessive erosion within any such Stormwater Control Measures. The Owner of a Lot on which Stormwater Control Measures are located shall not obstruct or interfere with their normal and intended operation. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Association, shall be responsible for maintenance of all Stormwater Control Measures located on and used exclusively in connection with such Owner's Lot or the improvements thereon

including, but not limited to, guttering, and pipes and drains for transportation of stormwater from such Lot into any other Stormwater Control Measures.

Declarant, during the Declarant Control Period, and thereafter, the Association, subject to any approval required by the Town, may at any time and from time to time grant, relocate, abandon or release one or more stormwater drainage easements in the Properties, subject to (e) the grant of any such stormwater drainage easement also shall be consented to in writing by the Owners of all portions of the Properties on which such stormwater drainage easement is located, unless the stormwater drainage easement is shown on a previously recorded plat of such portions of the Properties, in which event the consent of the Owners is not required and the Declarant or the Association, as applicable, may grant the stormwater drainage easement by written instrument, (f) no such relocation, abandonment or release shall materially adversely affect the portions of the Properties on which the stormwater drainage easement then is located or the portions of the Properties served thereby, or if it does have such material adverse effect it is consented to in writing by the Owners of all portion of the Properties on which such stormwater drainage easement is located and which are served thereby, and (g) no such grant, relocation, abandonment or release shall materially adversely affect the Stormwater Control Measures for the Properties. The provisions of this paragraph also are applicable to any access easement over any portion of the Properties that provides pedestrian or vehicular access from a public street right of way or other public easement or facility to and from any Stormwater Control Measures.

With respect to its obligations under this Section 4, the Association shall pay, post, provide for or comply with all bonds and other financial obligations under Legal Requirements and agreements, including Stormwater Agreements, executed by the Association (or, during the Declarant Control Period, by the Declarant on behalf of the Association or for later assignment to the Association), and the Association (and, during the Declarant Control Period, the Declarant on behalf of the Association) may enter into agreements, including Stormwater Agreements, with the Town, another association that exists for purposes similar to those of the Association, or any other Person with respect to inspecting, monitoring, measuring, collecting, controlling, transporting, handling, storing, discharging, operating and managing any part or all of the stormwater on, to, or from the Properties or any or all of the Stormwater Control Measures for the Properties, whether such Stormwater Control Measures are located within or outside of the Properties. Such agreements, including Stormwater Agreements, shall be binding on all Owners (or, with respect to Limited Common Area, all Owners to whose portion of the Properties such Limited Common Area is allocated), and may require payments from the Association or the Owners whose Lots are served by the applicable Stormwater Control Measures for the services provided by the Town, such other association or such other Person in inspecting, monitoring, measuring, collecting, controlling, transporting, handling, storing, discharging, operating or managing any part or all of such stormwater or Stormwater Control Measures, and such agreements, including Stormwater Agreements, may include all other terms and obligations required by Legal Requirements. In connection with the foregoing purposes expressed in herein, the Association (and, during the Declarant Control Period, the Declarant on behalf of the Association) may grant rights over, in, under, upon and through any and all stormwater drainage easements in the Properties, and may grant rights over, in, under, upon and through all easements in the Properties that provide pedestrian or vehicular access from a publicly dedicated street right of way to and from stormwater drainage easements or Stormwater Control Measures. Provided, however, during the Declarant Control Period no such agreement shall be valid unless the same shall have been consented to in writing by the Declarant.

In recognition of the fact that different Stormwater Control Measures may be necessary or desirable for different portions of the Properties or phases of the Planned Community (for example, because of the topography of the Properties it may be desirable for a portion of the Properties to have Stormwater Control Measures separate from or in addition to, other Stormwater Control Measures in or serving the Properties and it may be desirable for other portions of the Properties to utilize Stormwater Control Measures located outside of the Properties), and in further recognition of the desire of the Declarant for the provisions of the Declaration to be as flexible as reasonably necessary in order to maximize the benefit to the Properties of having or using one or more Stormwater Control Measures in accordance with sound engineering practices and approvals by the Town, in fulfilling its obligations under the Declaration the Association (or, during the Declarant Control Period, the Declarant on behalf of the Association or for later assignment to the Association) may enter into different agreements, including Stormwater Agreements, for different portions of the Properties, subject to all of the other terms of the Declaration. It further is recognized and contemplated by the Declaration that if such multiple Stormwater Control Measures or agreements, including Stormwater Agreements, are determined to

be necessary or desirable, that the costs of maintaining such Stormwater Control Measures or funding such agreements, including Stormwater Agreements, may be different for different portions of the Properties, some Stormwater Control Measures may be classified as Limited Common Area, and annual assessments or stormwater assessments (as defined herein) may be different for Lots in different portions of the Properties, and such differences may be classified as Limited Common Expenses under the Declaration.

Declarant hereby informs all Owners and other Persons who may from time to time deal with or come in contact with the Properties, that, as stormwater drains from the Properties or other properties into any of the Stormwater Control Measures for the Properties, it is possible that substances or materials that may be classified or regulated as "hazardous substances" or "toxic substances," or other regulated substances or materials under Legal Requirements relating to the environment, may flow through or accumulate in such Stormwater Control Measures. Accordingly, each Owner and other Person assumes the risk that such flowing through or accumulation may occur. In addition, each Owner further acknowledges that if it becomes necessary (as determined by Legal Requirements or by the Board) for such substances to be removed from the Stormwater Control Measures or otherwise handled in accordance with Legal Requirements, and for such Stormwater Control Measures to be cleaned-up following such removal or other handling, that the costs associated with such removal, handling or clean-up are Common Expenses, and that an additional stormwater assessment may be required to pay for such removal or resultant clean-up of the Stormwater Control Measures.

Declarant, at any time and from time to time, may assign to the Association, and the Association shall accept from Declarant the assignment of, all obligations of the Declarant under all agreements, including Stormwater Agreements, entered into by the Declarant with respect to Stormwater Control Measures for the Planned Community, provided the Declarant has performed, or made adequate provision for the performance of, all obligations, if any, specifically required of the Declarant under the agreement, including Stormwater Agreements, being assigned to the Association. The provisions of this Section 4 shall be construed liberally in order to allow the Declarant and the Association, on behalf of the Planned Community and all Owners, the necessary flexibility to comply with all Legal Requirements with respect to stormwater, including the execution of agreements, including Stormwater Agreements, with the Town or other Persons and the granting of easements to the Town or other Persons.

ARTICLE VII RIGHTS OF LENDERS

Section 1. Books and Records. Any holder of a first mortgage or first deed of trust on any Lot, or its agents, shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, and the Bylaws.

Section 2. Notice to Lenders. Upon written request to the Association, the holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

- (a) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan;
- (b) A lapse, cancellation, or material modification of any insurance policy of fidelity bond maintained by the Association;
- (c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots; or
- (d) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of first deeds of trust who have requested notice as provided in Section 2 of this Article VII have given their prior written approval, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes as provided in Section 1(c) of Article IV hereof, nor the exchange of real property as provided in Section 1(d) of Article IV hereof, shall be deemed a transfer within the meaning of this Section 3(a). Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association;
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;
- (c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or
- (d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Property for other than the repair, replacement, or reconstruction of the damaged improvements or, as provided in Section 3-113 of the Act, for distribution to the Owners, provided, however that, except as provided in Section 2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners of the Association.

Section 4. Payment of Taxes and Insurance Premiums. The holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The Persons making such payments shall be owed immediate reimbursement therefor by the Association.

Section 5. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment under this Declaration.

ARTICLE VIII EASEMENTS

In addition to all other easements granted or reserved elsewhere in this Declaration, Declarant hereby grants or reserves the following easements.

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water, sewer and natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or quasi-public utility installations are reserved as shown on the recorded maps of the Properties. The Association may reserve and grant easements over the Common Area as provided in Section 1(c) of Article IV of this Declaration. Within any such easement, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot by the recording of appropriate instruments in the Moore County Registry, and such instruments shall not be construed to invalidate any of these covenants.

Declarant reserves an easement in and right at any time in the future to grant a ten-foot (10') easement over, under and along the rear line of each Lot and a five-foot (5') over, under and along the side lines of each Lot for the purpose of the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision or other utilities, including water, sanitary sewage service and storm drainage facilities.

An easement is also reserved for the benefit of the Declarant and the Association, and their respective successors and assigns, over, across and under those portions of Properties designated as such on any recorded map or plat of any portion of the Properties (or any otherwise reserved) for the purpose of installing, operating, repairing and maintaining landscaping, irrigation system, entrance signage and fencing in the easement area as appropriate. No building, structure, fill, embankment, fence, driveway, planting, swing or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article IX of this Declaration and, if required, by the Town.

For a period of fifteen (15) years, Declarant grants to and reserves for the Declarant, the Association, the Town and their respective successors and assigns, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, the Person taking such action shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. The Person taking such action shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easement for Support. Every Lot and Dwelling which contributes to the lateral or vertical support of any adjoining Lot or Dwelling shall be burdened with an easement of support for the benefit of such adjoining Lot or Dwelling.

Section 3. Easement for Encroachments. In the event that any structure erected on a Lot encroaches upon any, other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant.

Section 4. Easement Over Common Area. A perpetual, nonexclusive easement over, under and through the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to, from and over the Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Common Area is subject to the easements granted herein.

Section 5. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Properties, and any other Legal Requirements that the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

Section 6. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

Section 7. Easements for Development. For so long as Declarant owns any real property within the Properties, Declarant reserves an easement over the Properties for the purpose of allowing Declarant to develop the Properties and construct improvements thereon.

ARTICLE IX
ARCHITECTURAL CONTROL

Section 1. Architectural Review Committee. Notwithstanding any other provision of this Declaration, no tree removal, site preparation on any Lot, change in grade or slope of any Lot, installation, planting or landscaping or construction of any Improvements shall be commenced, undertaken or maintained on any Lot until the Architectural Review Committee, which shall be composed of three (3) individuals, each generally knowledgeable about Declarant's concern for appearance standards within the Planned Community, (hereinafter, alternatively, the "Architectural Review Committee" and the "Committee") has approved, in writing, plans and specifications therefor and the location of any Improvements.

Section 2. Composition. Without limitation upon the generality of any other provision hereof, for so long as Declarant owns any Lots, Declarant shall annually appoint (and shall be entitled, from time to time and at any time, to remove) the members of the Committee. The members of the Committee shall not, except as otherwise provided herein, be required to be Members of the Association. Declarant or the Board, as appropriate, may elect, at its option, to increase or decrease the number of members of the Committee from time to time and at any time. In the event of the removal, death or resignation of any member of the Committee, Declarant, for so long as it has the authority to appoint the members of the Committee, shall have full authority to designate and appoint a successor. Declarant may at any time, revocably or irrevocably, assign its rights to appoint the members of the Committee to the Board. Members of the Committee may be removed or replaced at any time, with or without cause and without prior notice, by Declarant, until it no longer owns any Lots or thereafter by the Board.

Section 3. Procedure. No Improvement of any kind or nature shall be commenced or undertaken on any Lot until all plans and specifications, showing all significant aspects of the requested Improvement or construction, and a site plan therefor have been submitted to and approved in writing by the Committee as to (a) quality of workmanship and materials, adequacy of site dimensions, adequacy of design, and facing of main elevation with respect to nearby streets, (b) harmony of the proposed Improvements (including, but not limited to, the exterior design, materials, shape, heights, colors, and location thereof) with the neighboring Improvements and sites, (c) location with respect to topography and finished grade elevation and effect of location and use on other Lots and Improvements thereon, (d) drainage arrangements, and (e) other standards set forth in this Declaration and the Rules and Regulations. The detail of the plans and specifications required for Improvements shall be as determined necessary by the Committee based on the circumstances of the proposed Improvements. The Committee is authorized to require the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Committee, one (1) complete set of plans and specifications will be retained by the Committee and another complete set of plans and specifications will be marked "approved" and returned to the Owner or his designated representative. If found not to be in compliance with this Declaration or the Rules and Regulations, or if found to be otherwise unacceptable to the Committee, one (1) set of plans and specifications shall be returned to the Owner marked "disapproved," accompanied by a statement in reasonable detail of items found not to be in compliance with this Declaration or the Rules and Regulations or found otherwise unacceptable. Any modification or change to the set of plans and specifications approved by the Committee must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval, as required, herein, shall be in writing. However, although the Committee shall not have unbridled discretion with respect to taste, design, and any standards specified herein, the Committee's primary charge and responsibility shall be to maintain harmony of exterior design and colors with the community and neighboring Improvements and sites, as perceived and determined by the Committee, to the best of its ability. Upon the Committee's approval of a proposed Improvement by an Owner, said Owner shall diligently proceed with completion of the Improvement in accordance with the approved plans and specifications, and the Improvement shall be completed within a reasonable time not to exceed one (1) year from approval thereof. No approval by the Committee shall be required to rebuild a destroyed building on the same location if rebuilt strictly pursuant to the original plans.

Section 4. Failure of Committee to Act. If the Committee fails to approve or disapprove any plans and specifications or other submittals within forty-five (45) days after submittal thereof, it shall be presumed that the Committee approved the plans and specifications and other submittals. If plans and specifications or

other submittals are not sufficiently complete or are otherwise inadequate, the Committee may reject them as inadequate or may approve part, conditionally or unconditionally, and reject the remainder.

Section 5. Right of Inspection. The Committee shall have the right, at its election, to enter upon any Lot during preparation, construction, erection or installation of any Improvements in order to assess whether the work is in accordance with the approved plans and specifications. The Committee is authorized and empowered to inspect and review any and all aspects of the construction of any Improvements on any Lot that may, in its reasonable opinion, adversely affect the living enjoyment of other Owners or the general value and appearance of the Planned Community.

Section 6. Limitation of Liability. Notwithstanding any other provision of this Declaration, the Bylaws or the Rules and Regulations, the basis for the review and approval of any application or other matter pursuant to this Article IX is limited to aesthetic considerations and good faith efforts to ensure material satisfaction of the requirements set forth in Declaration, the Bylaws, and the Rules and Regulations. Neither Declarant nor the Association nor the Committee (nor their respective directors, officers, committee members, members, managers, staff or volunteers) shall be liable for any injuries, damages (consequential or otherwise), losses or otherwise (a) to any Person submitting plans and specifications and other submittals for approval, (b) to any Person by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications or (c) arising out of the manner or quality of approved Improvements or modifications on or to any Lot. No approval of plans or other documentation by the Committee shall be construed as a representation, warranty or implication that the Improvements, if built in accordance with the plans therefor or otherwise, will, for example, (d) be accurate, complete or otherwise free from defects, (e) meet applicable Legal Requirements, (f) be built in a good and workmanlike manner, (g) meet applicable standards for prevention of soil erosion, siltation and sediment pollution (including, but not limited to, regulations promulgated by North Carolina Department of Environment and Natural Resources) or alteration of the natural flow of water and diversion of run-off to adjoining properties or (h) meet applicable standards for structural, mechanical, electrical and all other technical aspects of a proposed design. Neither Declarant nor the Association nor the Committee (nor their respective directors, officers, committee members, members, managers, staff or volunteers) shall be liable for any injury, damages, or loss arising out of the manner or quality of approved improvements or modifications on or to any Lot. In addition, in no event shall Declarant or the Association or the Committee (nor their respective directors, officers, committee members, members, managers, staff or volunteers) have any liability whatsoever to any Person for any injuries, damages (consequential or otherwise), losses or otherwise that may be incurred or suffered on account of the approval, disapproval or conditional approval of any plans by the Committee. Notwithstanding any other provision of any Declaration, the Bylaws or the Rules and Regulations, the Owners hereby acknowledge that (v), generally, neither the Association nor the Committee (nor their respective directors, officers, committee members, members, managers, staff or volunteers) possesses significant professional experience in the matters within its jurisdiction, (w) neither the Association nor the Committee (nor their respective directors, officers, committee members, members, managers, staff or volunteers) is materially compensated for performance of its respective function pursuant to this Article IX, (x) no Person shall rely upon Declarant or the Association or the Committee (or their respective directors, officers, committee members, members, managers, staff or volunteers) to monitor, oversee, inspect or otherwise ensure compliance by any Person with this Declaration, the Bylaws, the Rules and Regulations or applicable Legal Requirements, (y) Declarant, the Association, and the Committee (and their respective directors, officers, committee members, members, managers, staff, and volunteers) disclaim all warranties, representations and guaranties, whether express or implied (including, but not limited to, all implied warranties and all representations and warranties as to merchantability or fitness for any particular purpose) related thereto, and (z) enforcement of the provisions of this Declaration, the Bylaws, and the Rules and Regulations thereby is and shall be in the sole and exclusive discretion of Declarant, the Association, and the Committee (and their respective directors, officers, committee members, members, managers, staff, and volunteers) and, therefore, although so entitled, neither Declarant nor the Association nor the Committee (nor their respective directors, officers, committee members, members, managers, staff or volunteers) possess any affirmative obligation to file suit or undertake other legal action to enforce any provision of this Declaration, the Bylaws or the Rules and Regulations.

Section 7. Other. All utility lines serving structures located on Lots shall be placed underground. All fuel or water tanks shall be located underground. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung or exposed on any Lot unless screened from view of other Lots and the roads.

Section 8. Fees. The Committee shall have the right to charge a reasonable fee for receiving and processing each application and the right (but not the obligation); at the expense of the Owner seeking approval of the Improvements, to employ an engineer or other professional to review the plans for the Improvements.

Section 9. Architectural Guidelines. The Association shall have the right (but not the obligation) to promulgate and from time to time amend, as Rules and Regulations, written architectural standards and construction specifications that may establish, define and expressly limit the standards and specifications that will be approved including, but not limited to, architectural style, exterior color finish, roofing material, siding material, driveway material, landscape design and construction technique.

Section 10. Permitted Structures. No Improvements shall be erected, altered, placed or permitted to remain on any Lot, except one (1) single family residence not to exceed two stories in height, exclusive of basement, with a minimum heated living area of one thousand eight hundred (1,800) square feet.

ARTICLE X USE RESTRICTIONS

Section 1. Land Use and Building Type. Except as specifically provided herein, Lots shall be used for residential purposes only. Except as permitted by the Town, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that the Declarant, Owners, real estate brokers and their agents may show Lots and homes for sale or lease. Notwithstanding the foregoing, the Declarant shall have the right to and may, in writing, permit another Person to (a) use Lots and improvements erected thereon for sales offices (whether manufactured structures or otherwise), field construction offices (whether manufactured structures or otherwise), storage facilities (whether manufactured structures or otherwise), and other uses consistent with the development of the Planned Community and the sale and construction of homes therein, (b) maintain spot-lighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary, and (c) conduct any other activities on Lots to benefit development, sales and construction efforts.

Section 2. Building Setbacks; House Location. No Dwelling shall be erected or maintained on any Lot outside of the building envelope required by the zoning ordinance of the Town (the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the Dwelling only to the extent that the same are deemed to be part of the Dwelling under the Zoning Ordinance as it exists as of the date of issuance of a certificate of occupancy for such Dwelling. Any Dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a Dwelling may be erected so as to face either street or the intersection of the two streets on which the Lot abuts.

Section 3. Fences. Any fence or wall installed within the Planned Community must meet all requirements of the Zoning Ordinance and must be approved as provided in Article IX of this Declaration. Chain-link fences will not be permitted. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots or to any fence installed by the Declarant at any entrance to or along any street within the Planned Community.

Section 4. Temporary Structures. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

Section 5. Parking; Driveways and Parking Pads; Abandoned Vehicles. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached

paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall be approved as provided in Article IX hereof.

No mobile house trailer (whether on or off wheels), recreational vehicle, trailer or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any street or any Lot within the Planned Community. No boat, boat trailer, or any other trailer shall be parked on any street within the Planned Community. A boat, boat trailer, or other trailer may be parked or kept on a Lot if it is parked or kept in the garage or approved out-building (and the door of the garage or out-building can close completely) or otherwise in such a manner that the boat and trailer are screened from the street, the Common Property, and other Lots. Screening may include an approved fence and plantings, but, in any case, the screening must comply with the Zoning Ordinance and be approved pursuant to Article IX of this Declaration. No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Planned Community or the Common Property, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot. Vehicles without current registration and inspection stickers are considered abandoned or inoperative.

Section 6. Animals. No animals, livestock or poultry of any kind shall be kept on any Lot, except that a reasonable number of cats, dogs, and other ordinary household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose and that they do not become a nuisance to the neighborhood. The Board has the right, in its sole and absolute discretion, to determine whether or not a particular animal is a nuisance and to require removal. No Person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on the Common Property at any time except as permitted by the Rules and Regulations or by applicable Legal Requirements. All animals shall be on a leash when outside the Owner's Dwelling. The owner of a permitted animal shall be responsible for removing and cleaning up any excrement deposited by such animal on any Lot, street right of way, or the Common Property.

Section 7. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted.

Section 8. Signs. Except as otherwise required by the Town, no sign of any kind shall be displayed to the public view on any Lot not more than three (3) signs of not more than four (4) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than forty-five (45) days before such election and shall be removed within seven (7) days after such election. No sign of any kind shall be displayed on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area in connection with the development and sale of the Properties.

Section 9. Antennas; Satellite Dishes. No television, radio or other electrical towers, aeriels, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon unless approved in accordance with Article IX hereof, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, Section 1.4000 promulgated under the Telecommunications Act of 1996. The Association shall be empowered to adopt, as Rules and Regulations, policies governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae. To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to Rules and Regulations may be installed only if it (a) is located in the rear or side yard of the Lot, (b) is not visible from any street (whether by location or screening), (c) is integrated with the Dwelling and surrounding landscape, and (d) is approved pursuant to Article IX of the Declaration.

Section 10. Swimming Pools. No above-ground swimming pools are permitted in the Planned Community, except that small, inflatable wading pools shall be permitted in the back yard of a Dwelling.

Section 11. Mailboxes. No mailbox, other than community standard mailboxes specified by the Declarant, shall be placed or maintained on any Lot unless the same has been approved in accordance with the provisions of Article IX of this Declaration.

Section 12. Maintenance of Lot and Improvements; Construction. As more fully provided in this Declaration, each Owner shall keep his Lot, including, but not limited to, plantings, landscaping and lawns, in a neat and attractive condition and shall keep the improvements thereon in a suitable state of repair (including, but not limited to, installation, maintenance, replacement, and reasonable use of a sufficient irrigation system). If an Owner fails to comply with this provision, the Declarant or the Association may remedy such non-compliance and the Owner of such Lot shall be responsible for all costs of bringing the Lot into compliance with this provision. Any such costs shall be deemed a special assessment against the Lot.

In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the Owner of such Lot shall repair the damage and reconstruct the improvement within nine (9) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the Owner may, at his option, either completely remove the damaged structure and landscape the area on which the structure stood or repair or reconstruct the structure.

All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The Owner of each Lot shall at all times keep public streets free abutting his Lot from any dirt, mud, garbage, trash or other debris resulting from construction on his Lot.

No building materials or equipment shall be stored on any Lot in an exposed location except for the purpose of construction on the Lot and, except to the extent permitted by the Association, shall not be stored thereon for longer than reasonably necessary for construction therewith. All Owners shall, during the course of construction and without limitation upon the generality of any other provision of this Declaration, (a) be required to prepare and implement a plan by which all construction debris is timely deposited in trash containers, which shall, at all times, be screened from view of other Lots and the roads and (b) responsible for the costs of repairs, as reasonably determined by the Architectural Guidelines and as a special assessment against the Lot, to the roads resultant from construction traffic.

Section 13. Garbage; Unsightly Storage. All trash and rubbish) shall be kept in garbage cans stored behind the principal building in such a manner as not to be visible from the street upon which the principal building fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash or garbage pickup, trash or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to an approved enclosure the night of the scheduled pickup. Trash containers used by the Declarant during construction are exempt from this provision.

Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any applicable legal requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or installation of streets and utilities in the Properties, or, as may be allowed by Declarant, during the Declarant Control Period, and thereafter, the Board, when reasonably required for the construction of other improvements within the Planned Community.

Section 14. Restrictions on Rental of Dwellings. It is the intent of the Declarant that all Dwellings within the Planned Community are intended for use and occupancy by the Owner of the Dwelling. Accordingly, and notwithstanding anything to the contrary herein, the term "residential" as used in Section 1 of this Article X specifically excludes the leasing of Dwellings in any one or more of the following instances:

- (a) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and has no future intent to do so;
- (b) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and who enters into a lease with a tenant that gives the tenant the option to purchase the Dwelling during, or at the end of, the term of the lease; or
- (c) by an Owner where the primary purpose of the ownership of the Dwelling is for commercial purposes in that the Dwelling is intended primarily for lease to tenants and not for occupancy by the Owner as the Owner's primary residence.

Notwithstanding the foregoing restrictions on leasing of Dwellings, during the Declarant Control Period, Declarant, at its option, may (y) sell a model home or sales center to a third party and lease the same from such Owner during back leased the Dwelling, provided that such model home is not used as a residence, or (z) lease the Dwelling on any Lot owned by Declarant.

Section 15. Waiver of Violations. Declarant, or the persons or firms to whom the architectural review and approval authority has been delegated pursuant to Article IX of this Declaration, may, but shall not be obligated to, waive any violation of the designated and approved building setback lines on any Lot, provided that, no waiver may be granted for a violation in excess of twenty-five percent (25%) of the applicable requirements. No such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the Zoning Ordinance or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Moore County Registry.

Section 16. Street Lighting. Declarant reserves the right to subject the Planned Community to a contract with Progress Energy, Inc. or other utility provider for installation and operation of street lighting that requires a continuing monthly payment thereto by each Owner or by the Association.

ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. The Association and each Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or the Rules and Regulations. Failure by the Association or an Owner to enforce any covenant, restriction or any of the Rules and Regulations herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall not be obligated to take action to enforce any covenant, restriction or any of the Rules and Regulations which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable Legal Requirements, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to stop the Association from enforcing any other covenant, restriction or any of the Rules and Regulations.

Section 2. Term; Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended by a vote of eighty percent (80%) of the Members.

This Declaration may be amended only in strict compliance with this Section 2 and the Act, including, without limitation, Section 2-117 of the Act, except that no Amendment altering or impairing Special Declarant Rights

may be made without the written consent of the Declarant. This Declaration may also be amended by an instrument signed by the Owners of not less than seventy five percent (75%) of the Lots and, during the Declarant Control Period by the Declarant; provided, however, that in no event may Declarant's rights hereunder may be amended or altered without Declarant's prior written consent. For the purpose of this Section 2, additions to existing property as provided in Section 2 of Article II hereof shall not constitute an "amendment". Notwithstanding the foregoing, Declarant, without the consent or joinder of the Owners or other Person, may amend this Declaration during the Declarant Control Period, provided such amendment is not expressly prohibited by the Act, and further provided that such amendment does not adversely affect the title to any Lot nor materially alter or change any Owner's right to the use and enjoyment of his Lot or the Common Area.

Section 3. Non-Liability of Governmental Entities. Neither the Town nor any other governmental entity shall be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot. The Town shall not be responsible for maintaining any private streets within the Properties, since such streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance. The Association is responsible for maintaining all private streets that are Common Area of the Association.

Section 4. Subdivision of Lots. No Lot may be subdivided, by sale or otherwise, so as to reduce the total Lot area shown on a recorded plat of the Properties, except with the consent of the Declarant (during the Declarant Control Period), and thereafter of the Association, and, if required, by the Town.

Section 5. Insurance. The Association shall procure and maintain adequate liability insurance covering the Association, in an amount not less than one million dollars (\$1,000,000.00). The Association shall also procure and maintain full replacement value hazard insurance on real and personal property owned by the Association, and shall procure and maintain officers and directors and employer liability insurance. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of this Declaration.

Section 6. Rules and Regulations.

- (a) The Board shall, without limitation upon the generality of any other provision hereof, have the authority to adopt Rules and Regulations governing the use of the Planned Community (including, but not limited to, the Properties, the Common Property, and the Lots) in order to promote, inter alia, safety, the preservation of the aesthetic values of the Planned Community, and the general quality of life within the Planned Community. The Board shall furnish a written copy of policies to the Owner of each Lot at least fifteen (15) days before such Rules and Regulations become effective. In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws, the Rules and Regulations and other restrictions applicable to the Properties, which sanctions may include, but are not limited to, (i) monetary fines, which fines shall be deemed a special assessment against the Lot of the violator, and (ii) suspension of the right to vote and the right to use any recreational facilities within the Common Area; provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.
- (b) In addition, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Common Property if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association, provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot. The Association shall have the right and easement to go upon any Lot for the purpose of exercising its rights hereunder. Any entry onto any Lot for such purpose shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action

to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, Attorneys' Fees and court costs, reasonably incurred in such action.

Section 7. Condemnation/Casualty. If all or any part of the Common Area and improvements thereon are taken by power of eminent domain or are damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements except as provided in Section 3-113(g) of the Act, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section 7 shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements in lieu of the damaged or destroyed improvements.

Section 8. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period must: (a) be for a term of two years or less, (b) be terminable without penalty by the Association upon no more than ninety (90) days written notice, and (c) be commercially reasonable.

Section 9. Evidence of Member Approval. In the event that any action requires evidence of consent of the Members or a specified percentage of the Members, such approval shall be conclusively presumed if supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

CERTIFICATE OF THE ARBORETUM
PROPERTY OWNERS ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of The Arboretum Property Owners Association, Inc., was held on [Date and Year] at [Time]. The purpose [one of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast. _____ votes were cast in favor of such action, and _____ votes were cast against such action. Accordingly, the motion to approve [describe the action approved] was approved by at least _____% of the Members as required by the Declaration and Bylaws of the Association.

[President/Secretary]

Section 10. Number and Gender. Whenever the context requires, the singular shall include the plural, and vice versa, and one gender shall include all.

Section 11. Captions. Captions are for the purpose of reference only and shall not be deemed to be in any manner interpretive of any provision of this Declaration.

Section 12. Severability. Pursuant to the terms of Section 2-103(a) of the Act, if any provision of this Declaration is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of the Declaration and shall not be deemed to nullify or affect any other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by applicable Legal Requirements. If any item, term or provision contained in this Declaration is in conflict with any applicable Legal Requirement, this Declaration shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.

Section 13. Conflicts. In the event of a conflict between this Declaration and the Articles of Incorporation of the Association, the Articles of Incorporation shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control. In the event of any conflict between this Declaration and any Community Declaration, this Declaration shall control. Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act, Chapter 55A of the North Carolina General Statutes, the North Carolina Nonprofit Corporation Act, and the Code shall in all cases control any construction inconsistent therewith.

Section 14. Rule Against Perpetuities. Without limitation upon any other provision hereof or Section 2-103 of the Act, if any provision hereof is deemed to be unlawful, void or voidable by reason of the rule against perpetuities or other applicable Legal Requirement related to the imposition of restrictions upon real property and the duration or the enforcement thereof, the provision shall expire twenty-one (21) years after the death of the last survivor of the descendants of Franklin D. Roosevelt (the late President of the United States), Henry Ford (the late Chairman of Ford Motor Company), and John D. Rockefeller (the late Chairman of the Standard Oil Company) known to be alive on the Effective Date.

Section 15. Declarant. Nothing contained in this Declaration shall be construed to permit interference with the development of the Lots by Declarant, construction of homes by Declarant or with the lease or sale of any of the Lots by Declarant so long as its development and construction follow the general plan of development previously approved by the Town. The restrictions contained herein shall not be deemed to apply to any sales office, signs, landscaping, storage area, construction trailer, model home, or other temporary or permanent, improvement installed by or with the approval of Declarant. Therefore, without limiting the generality of any other provision hereof, so long as Declarant owns a Lot, no action may be taken nor may any Rule be adopted or amended that could, directly or indirectly, adversely affect Declarant, any of its rights, or any Lot owned by it without, in each case, obtaining Declarant's prior written consent. All rights herein created for, held by, or reserved by Declarant (including, but not limited to, the Special Declarant Rights) shall belong exclusively to Declarant and to such Persons to which they are expressly assigned by Declarant, and none of them shall be deemed transferred to any Owner unless the instrument effecting such transfer expressly recites the assignment of such rights.

Section 16. Security Measures. Neither the Association nor the Board shall have any responsibility for establishing or maintaining any security measures within the Property, such measures being the sole responsibility of each Owner, as to his Lot and property, and to the appropriate public officials including, without limitation, the Southern Pines Police Department.

Section 17. Consumer Price Index Adjustment. The amounts denominated in United States Dollars set forth in this Declaration shall be adjusted, to the maximum extent permitted under applicable Legal Requirements and as of each successive January 1 after the Effective Date (hereinafter the "Adjustment Date"), by a percentage equal to the percentage increase, if any, in the Consumer Price Index, All Urban Consumers, (1982-1984=100), All Items, as compiled and published by the Bureau of Labor Statistics, U.S. Department of Labor (hereinafter the "CPI") from the Effective Date to the Adjustment Date. If, after the Effective Date, the CPI is converted to a different standard reference base or otherwise revised or ceases to be available, the determination of any new amount shall be made by the Board of Directors with the use of a conversion factor, formula or table for converting the CPI as may be published by any other nationally recognized publisher or source of similar statistical information.

Section 18. Binding Determination. In the event of any dispute or disagreement with or between any Owners relating to, or of any other disputes, disagreements or questions regarding, the interpretation or application of the provisions of this Declaration or the Articles of Incorporation or the Bylaws, the determination thereof (a) by Declarant during the Declarant Control Period and (b) thereafter by the Board of Directors shall be final and binding on each and all Owners; provided, however, that any determination that affects Declarant, directly or indirectly, shall require the prior consent of Declarant.

Section 19. Captions and Titles. All captions, titles or headings in this Declaration are for the purpose of reference and convenience only and are not deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

Section 20. Attorneys Fees. In any action or proceeding commenced by or against the Declarant relating to or arising out of this Declaration, whether such action or proceeding be founded upon contract, tort, statute, regulation or otherwise, Declarant shall be entitled to recover from any Owner its costs and expenses (including but not limited to Attorneys Fees) of prosecuting or defending any such action or proceeding in which Declarant has substantially prevailed. For purposes of this Declaration, Declarant shall be considered to have "substantially prevailed" in such action or proceeding if its net recovery therein exceeds that of the Owner in the same action or proceeding, or, in an action or proceeding in which Declarant is the defendant and has asserted no counterclaim against the Owner, if the Owner recovers no damages (which for purposes of this Section 20 shall not be considered to include cost or Attorneys Fees or other litigation expenses, even if the same are awarded pursuant to applicable Legal Requirements) from Declarant or fails to obtain any equitable relief against Declarant.

Section 21. Governing Law; Remedies; Arbitration.

- (a) The Parties acknowledge and agree that, as the State of North Carolina has a substantial relationship to the Parties and to this Declaration, all questions with respect to the construction hereof and the rights and liabilities of the Parties shall be determined in accordance with the applicable provisions of the internal laws of the State of North Carolina; provided, however, that, if any applicable conflict or choice of law rules would choose the law of another State, the Parties hereby waive the effect of such rules and agrees that the substantive, procedural, and constitutional law of the State of North Carolina shall nonetheless govern.
- (b) All obligations of the Owners and rights of Declarant and the Association expressed herein shall be in addition to, and not in limitation of, those provided by applicable Legal Requirements.
- (c) Any and all disputes (except (i) efforts to obtain possession of any real or personal property (including, but not limited to, money owed), (ii) the receipt and enforcement of a temporary restraining order, preliminary injunction, permanent injunction or other equitable relief, (iii) the filing or enforcement of a lien including, but not limited to, foreclosure (judicial, power of sale or otherwise) thereon or (iv) the enforcement of an arbitration award hereunder) arising out of the terms of this Agreement shall be settled exclusively by binding arbitration, to be conducted in Southern Pines, North Carolina, before an impartial and neutral arbitrator selected by the parties in accordance with the North Carolina Revised Uniform Arbitration Act; provided, however, that, if the parties cannot agree upon an arbitrator, each party shall each select an arbitrator who is a member in good standing of the North Carolina State Bar (provided, however, that no arbitrator selected hereunder shall, as material component of his practice, engage in the representation of plaintiffs in cases related to personal injuries or professional malpractice), and the two arbitrators so selected shall select a third arbitrator to serve therewith, and a majority of the three arbitrators shall be the decision thereof. THE PARTIES HEREBY WAIVE ANY RIGHT TO A JURY TRIAL OR A TRIAL IN COURT.

Section 22. Waiver. No delay or failure on the part of Declarant or the Association in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

Section 23. Interpretation. In this Declaration, unless an express contrary intention is herein set forth, (a) the singular number includes the plural number and vice versa, (b) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Declaration as a whole and not to any particular section or other provision hereof, (c) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term, (d) "or" is used in the inclusive sense of "and/or," (e) with respect to the determination of any period of time, "from" means "from and including," and "to" means "to but excluding," (f) references to any party includes its successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Declaration, and reference to a party in a particular capacity excludes such party in any other capacity or individually, (g) references to any gender includes the other

gender, (h) references to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof, (i) references to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision, and (j) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

ARTICLE XII
CONSERVATION EASEMENT

Section 1. Conservation Easement. No Owner shall materially alter the grade of or otherwise erect or install, or permit to be erected or installed, any Improvements (other than fencing or sidewalks) in the area of each Lot designated as "15' Conservation Easement" on plats of the Properties recorded in the Registry or otherwise established by written instruments recorded in the Registry (the "Conservation Easement Area"); provided, however, that, without limitation upon any other provision of this Declaration, (a) no provision of this Article XII shall limit the right of the Owner to conduct or perform any act or undertake any use that is not (i) specifically prohibited or limited by this Article XII and (ii) inconsistent with the protection of the natural, open space, and scenic resources and vistas of the Conservation Easement Area and (b) Association reserves the right to install, at its own cost and expense, a walking path (which shall not be paved or otherwise surfaced in a manner that transforms it, or any portion of the Conservation Easement Area, into an impervious surface) through and over the Conservation Easement Area.

[the remainder of this page intentionally left blank]

IN WITNESS WHEREOF, this Declaration is executed (a), if by individuals, by hereunto setting their hands under seal by adoption of the word "SEAL" appearing next to the individuals' names or signatures, (b), if by a corporation, by the duly authorized officers of the corporation on its behalf under seal by adoption of the facsimile seal printed hereon for such purpose or, if an impression seal appears hereon, by affixing such impression seal or by adoption of the word "SEAL" appearing next to the name of the corporation or the signatures of the officers, directors or shareholders, (c), if by a partnership, by the duly authorized partners of the partnership on its behalf under seal by adoption of the word "SEAL" appearing next to the name of the partnership or the signatures of the partners or (d), if by a limited liability company, by the duly authorized members or managers on its behalf under seal by adoption of the word "SEAL" appearing next to the name of the limited liability company or the signatures of the members or managers, on the day and year first above written.

Mark E. Brenner (SEAL)
Global Properties and Development, L.L.C.
Mark E. Brenner
Manager

STATE OF North Carolina
COUNTY OF Wake

I certify that the following person personally appeared before me this day and acknowledged to me that the following person voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Name	Capacity
Mark E. Brenner	Manager, Global Properties and Development, L.L.C.

- I have personal knowledge of the identity of the principal;
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____; or
- A credible witness has sworn to the identity of the principal

Witness my hand and official stamp or seal on this the 11 day of June, 2008.

Denise M Blanton
Notary Public

Print notary name: Denise M Blanton
(notary name must be exactly as on notary seal)

My commission expires: 7/8/2011

[affix notary seal, which must be fully legible, below]

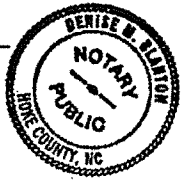


Exhibit A

Lying and being in the Town of Southern Pines, McNeill Township, Moore County, North Carolina, and being more particularly described as follows:

BEING all of that certain tract or parcel of land containing 81.96 acres as shown on plat of survey entitled "Recombination Survey for Metropolitan Capital Associates, LLC, Town of Southern Pines, McNeill Township, Moore County, North Carolina" dated November 1, 2005 and revised February 2, 2006, prepared by William E. Craven, Professional Land Surveyor, of Hobbs, Upchurch & Associates, P.A., and recorded in Plat Cabinet 13, Slide 128, Moore County Registry, which plat is referenced for a more particular description.

CONSENT OF MORTGAGEE

Branch Banking and Trust Company, the beneficiary of a North Carolina Deed of Trust and Security Agreement recorded in the Moore County Registry in Book 3361 at Page 215 (the "Deed of Trust"), and BB&T Collateral Service Corporation, the trustee under the Deed of Trust, hereby (a) consent to, approve, and ratify the execution and delivery of the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for the Arboretum (the "Declaration") and the recordation thereof in the Moore County Registry and (b) fully and unconditionally, as if the Declaration has been recorded in the Moore County Registry prior to the Deed of Trust, subject and subordinate the Deed of Trust and the lien thereof to the provisions of the Declaration.

[signature pages to follow]

IN WITNESS WHEREOF, Branch Banking and Trust Company, by its authorized officer, has caused this Consent of Mortgage to be executed this 20 day of November, 2008.

Branch Banking and Trust Company
By: John A. Mecimore
Title: Senior Vice President

STATE OF NC
COUNTY OF Moore

I certify that the following person personally appeared before me this day and acknowledged to me that the following person voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:


Name	Capacity
John A. Mecimore	Senior Vice President Branch Banking and Trust Company

- I have personal knowledge of the identity of the principal;
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____; or
- A credible witness has sworn to the identity of the principal

Witness my hand and official stamp or seal on this the 20 day of November, 2008.

Edna F. Lea

Notary Public



EDNA F. LEA
NOTARY PUBLIC - NORTH CAROLINA
MOORE COUNTY
My Commission Expires 11-10-09

Print notary name: Edna F. Lea
(Notary name must be exactly as on notary seal)

My commission expires: 11-10-09

[affix notary seal, which must be fully legible, below]

IN WITNESS WHEREOF, BB&T Collateral Service Corporation, by its authorized officer, has caused this Consent of Mortgagee to be executed this 20 day of November, 2008.

BB&T Collateral Service Corporation
By: [Signature]
Title: SVP

STATE OF NC
COUNTY OF Moore

I certify that the following person personally appeared before me this day and acknowledged to me that the following person voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Name	Capacity
Mark Packard	Senior Vice President BB&T Collateral Service Corporation

- I have personal knowledge of the identity of the principal;
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____; or
- A credible witness has sworn to the identity of the principal

Witness my hand and official stamp or seal on this the 20 day of November, 2008.

Edna F. Lea
 EDNA F. LEA
 NOTARY PUBLIC - NORTH CAROLINA
 MOORE COUNTY
 My Commission Expires 11-10-09
 Notary Public
 Print notary name: Edna F. Lea
 (notary name must be exactly as on notary seal)

My commission expires: 11-10-09

[affix notary seal, which must be fully legible, below]

FOR REGISTRATION REGISTER OF DEEDS
Judy D. Martin
Moore County, NC
March 02, 2009 02:30:20 PM
Book 3530 Page 484-486
FEE: \$20.00
INSTRUMENT # 2009002992

LC

Later



INSTRUMENT # 2009002992

Prepared by and return to Stephen F. Later, Robbins May & Rich LLP, 120 Applecross Road, Pinehurst, North Carolina 28374
No Title Examination Performed

Brief Description for Index: Amendment to Declaration of Covenants/Arboretum

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,
CHARGES AND LIENS FOR THE ARBORETUM

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR THE ARBORETUM (this "Amendment") is made as of the date on which it is recorded in the Moore County Registry (the "Effective Date") by Global Properties and Development, L.L.C., a North Carolina limited liability company, ("Declarant") in order to amend that certain Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for The Arboretum recorded in Book 3493 at Page 516 of the Moore County Registry (the "Declaration")

WITNESSETH

WHEREAS Declarant is entitled to exercise, pursuant to its record ownership of Lots (as defined in the Declaration) within the Subdivision (as defined in the Declaration), more than seventy-five percent (75%) of all of the votes in the Association (as defined in the Declaration) as allocated in accordance with Section 2 of Article XI of the Declaration.

WHEREAS Declarant is entitled to amend the Declaration as hereinafter set forth pursuant to Section 2 of Article III of the Declaration.

NOW, THEREFORE, Declarant hereby amends the Declaration as hereinafter set forth.

1. Allocation. Insert the provision hereinafter set forth as Section 2(c) of Article III of the Declaration.

- (c) Any and all references herein to votes of Members or Owners or Lots shall be predicated upon the allocation of votes to each Member, Owner or Lot as set forth in Section 2(a) or Section 2(b) of this Article III and, in the case of Owners of multiple Lots, the allocation thereto of votes for each Lot pursuant to Section 2(a) or Section 2(b) of this Article III.

2. Maximum Annual Assessment. Strike Section 3 of Article V of the Declaration and insert the provision hereinafter set forth in lieu thereof.

Section 3. Maximum Annual Assessment.

- (a) Declarant shall, not later than June 30, 2009, set the Maximum Annual Assessment for each Class A Lot, and, beginning on January 1, 2010 and on January 1 of each year thereafter, the Maximum Annual Assessment for Class A Lots shall automatically be increased by ten percent (10%) of the Maximum Annual Assessment for the previous calendar year unless the Board adopts (i) a lesser increase of the Maximum Annual Assessment or (ii) a greater increase of the Maximum Annual Assessment; provided, however, that (iii) the Maximum Annual Assessment shall not, without limitation upon Section 3(b) of Article V, be increased in excess of ten percent (10%) of the Maximum Annual Assessment for the previous calendar year plus the aggregate increase, if any, as expressed in percentage terms, in the Consumer Price Index, U.S. City Average, All Items, (Base Period 1982-84=100) as published by the Bureau of Labor Statistics of the United States Department of Labor (or, if such index is discontinued, the replacement therefor as designated thereby) for the most recent twelve (12) months prior thereto, (iv) Declarant shall set discrete Maximum Annual Assessments for Improved and Unimproved Class A Lots pursuant to which an "Improved" Class A Lot shall mean a Lot improved by a Dwelling and an "Unimproved" Class A Lot any other shall mean a Lot that is not an Improved Lot, (v) the Maximum Annual Assessment for Class B Lots shall, notwithstanding any other provision of this Declaration, be no dollars (\$0.00), (vi) notwithstanding any consolidation of Lots for administrative or other purposes, the combination or recombination of two (2) or more of Lots shall not, without the prior written consent of Declarant in its sole and exclusive discretion, serve to eliminate, waive or otherwise limit any annual assessments, special assessments or limited special assessments otherwise allocable thereto or due thereon, and (vii) Declarant shall be entitled, in its sole and exclusive discretion, to waive or accrue dues, in whole or in part, for general contractors that are participants in a program established by Declarant, which shall operate upon terms and conditions determined by Declarant in its sole and exclusive discretion, to encourage high-quality construction at the Properties.
- (b) Notwithstanding any other provision of this Declaration (including, but not limited to, Section 3(a) of Article V) but without limitation upon Section 3(a)(v) of Article V, however, the Board shall be entitled, from time to time upon (i) transfer to the Association of a fee, leasehold, license or other interest in improvements (including, but not limited to, community center, clubhouse, and pool facilities) for use by the Members and personal property for use therein or therewith (a "New Facility" and, collectively, "New Facilities") or (ii) the completion of construction of a New Facility or New Facilities on or in the Common Area, by Declarant or the Association, to increase the Maximum Annual Assessment by an amount sufficient to pay for all operational costs and expenses thereof (including, but not limited to, staff compensation and benefits, taxes and fees, debt service, utilities, insurance, maintenance, repairs, and replacements, and inventory and supplies) necessary or appropriate to maintain any New Facility or New Facilities to a first-class and superior standard and condition (the intent of this Section 3(b) of Article V being that the Association shall be responsible for all costs and expenses arising from or related to any New Facility or New Facilities); provided, however, that no provision of this Section 3(b) of Article V shall obligate, or be construed to obligate, Declarant to construct any New Facility or New Facilities.

[the remainder of this page intentionally left blank]

IN WITNESS WHEREOF, this Amendment is executed (a), if by individuals, by hereunto setting their hands under seal by adoption of the word "SEAL" appearing next to the individuals' names or signatures, (b), if by a corporation, by the duly authorized officers, directors or shareholders of the corporation on its behalf under seal by adoption of the facsimile seal printed hereon for such purpose or, if an impression seal appears hereon, by affixing such impression seal or by adoption of the word "SEAL" appearing next to the name of the corporation or the signatures of the officers, directors or shareholders, (c), if by a partnership, by the duly authorized partners of the partnership on its behalf under seal by adoption of the word "SEAL" appearing next to the name of the partnership or the signatures of the partners or (d), if by a limited liability company, by the duly authorized members or managers on its behalf under seal by adoption of the word "SEAL" appearing next to the name of the limited liability company or the signatures of the members or managers, on the day and year first above written.

[Signature] (SEAL)
Global Properties and Development, L.L.C.
Mark E. Brenner
Manager

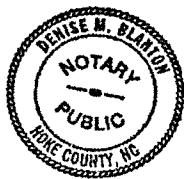
STATE OF North Carolina
COUNTY OF Wake

I certify that the following person personally appeared before me this day and acknowledged to me that the following person voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Name	Capacity
Mark E. Brenner	Manager, Global Properties and Development, L.L.C.

- I have personal knowledge of the identity of the principal;
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____; or
- A credible witness has sworn to the identity of the principal

Witness my hand and official stamp or seal on this the 24 day of February, 2009.



Denise M Blanton
Notary Public

Print notary name: Denise M Blanton
(notary name must be exactly as on notary seal)

My commission expires: 7/8/2011

[affix notary seal, which must be fully legible, below]

Prepared by and return to Stephen F. Later, Robbins May & Rich LLP, 120 Applecross Road, Pinehurst, North Carolina 28374
No Title Examination Performed

Brief Description for Index: Patio Homes Community Declaration of Covenants/Arboretum

PATIO HOMES COMMUNITY DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS FOR THE ARBORETUM

THIS PATIO HOMES COMMUNITY DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR THE ARBORETUM PATIO HOMES (this "Supplemental Declaration") is made as of the date on which it is recorded in the Moore County Registry (the "Effective Date") by Global Properties and Development, L.L.C., a North Carolina limited liability company, ("Declarant").

WITNESSETH

WHEREAS Section 5 of Article II of the Declaration provides for the imposition of Community Declarations to supplement the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for the Arboretum;

WHEREAS Section 13 of Article V of the Declaration provides for imposition of Neighborhood Assessments to supplement the assessments levied pursuant to Article V of the Declaration;

NOW, THEREFORE, Declarant hereby declares that the Patio Home Lots are and shall be owned, held, transferred, sold, conveyed, mortgaged, hypothecated or encumbered, leased, improved, used, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Supplemental Declaration, which shall constitute a Community Declaration for purposes of the Declaration, each and all of which (a) shall run with the real property and be binding on all Persons owning any right, title or interest therein or any part thereof (whether legal, equitable or beneficial) their respective heirs, personal representatives, successors and assigns, (b) shall inure to the benefit and be binding upon each Owner thereof, and (c) are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Planned Community and of each of the Patio Home Lots (as hereinafter defined).

ARTICLE I
GENERAL

Section 1. Definitions.

(a) "Declaration" shall mean and refer to Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for the Arboretum recorded in Book 3493 at Page 516 of the Moore County Registry.

(b) "Patio Home Lots" shall mean and refer to (a) Lots 97-173 and (b) Lots that are designated thereas in a deed therefor executed by Declarant; provided, however, that Declarant shall be entitled, prior to the execution and delivery thereby of a deed for a Lot designated as a Patio Home Lot, to reverse and remove its designation thereas.

Section 2. Capitalized Terms. Capitalized terms used but not otherwise defined herein shall possess the meanings ascribed thereto in the Declaration unless otherwise specified.

Section 3. Supplemental Effect. This Supplemental Declaration shall supplement and be subject the Declaration and shall not in any manner limit the Declaration. Further, without limitation upon the precedent sentence, this Supplemental Declaration shall incorporate, *mutatis mutandis*, Article XI of the Declaration. The Declaration shall be deemed to be amended, pursuant to Section 2 of Article XI of the Declaration if and to the extent required to effectuate the provisions of this Supplemental Declaration.

Section 4. Incorporation by Reference. Article XI of the Declaration is, without limitation upon the generality of any other provision hereof, hereby incorporated, *mutatis mutandis*, by reference.

ARTICLE II ADDITIONAL OBLIGATIONS OF PATIO HOME LOTS

Section 1. Neighborhood Assessments. Each Owner of a Patio Home Lot, by acceptance of a deed therefor, whether it shall be so expressed therein or otherwise, is deemed to covenant and agree to pay to the Association the Neighborhood Assessment further described in this Article II (the "Patio Homes Neighborhood Assessment"). The Patio Homes Neighborhood Assessments shall (a) constitute Neighborhood Assessments for purposes of the Declaration, (b) be distinct from and in addition to the Maximum Annual Assessment levied under Article V of the Declaration, (c) constitute assessments for purposes of Section 1, Section 8, and Section 9 of Article V of the Declaration, and (d) shall be sufficient, in the aggregate, to pay all costs related to provision of the Patio Homes Maintenance Services and shall be adjusted by the Association, from time to time and at any time, to reflect increases or decreases therein.

Section 2. Scope of Assessment. The Association shall engage qualified employees or contractors to (a) clean all gutters, on a quarterly basis, on Dwellings erected on the Patio Home Lots, (b) provide landscape maintenance service, on a reasonable and seasonally-determined basis, for the Patio Home Lots (exclusive, however, of (i) flowers or gardens, (ii) significant additional bushes, shrubs, trees or other landscape or hardscape elements installed by a Patio Home Lot Owner, and (iii) bushes, shrubs, trees or other landscape or hardscape elements that require unusual or special maintenance practices or procedures), and (c) reasonable reserves related thereto (collectively, the "Patio Homes Maintenance Services"). The costs of the Patio Homes Maintenance Services shall not, to the maximum extent permitted by applicable law and without limitation upon Section 3-103(c) of the Act, be subject to review and approval of the Patio Home Lot Owners.

Section 3. Alteration of Scope of Assessment. The scope of the Patio Homes Maintenance Services shall not be expanded or limited without (a) by (i) the affirmative vote of at least sixty-seven percent (67%) of the votes cast by Members who are Patio Home Lot Owners present at a duly-called meeting thereof for which the notice of meeting includes notice of the proposal to expand or limit the scope of the Patio Homes Maintenance Services or (ii) written agreement signed by at least sixty-seven percent (67%) of the Members who are Patio Home Lot Owners and (b) prior written consent of Declarant during the Declarant Control Period.

Section 4. Association. No additional association, incorporated or unincorporated, shall be otherwise organized by or on behalf of the Patio Home Lot Owners.

[the remainder of this page intentionally left blank]

IN WITNESS WHEREOF, this Supplemental Declaration is executed (a), if by individuals, by hereunto setting their hands under seal by adoption of the word "SEAL" appearing next to the individuals' names or signatures, (b), if by a corporation, by the duly authorized officers of the corporation on its behalf under seal by adoption of the facsimile seal printed hereon for such purpose or, if an impression seal appears hereon, by affixing such impression seal or by adoption of the word "SEAL" appearing next to the name of the corporation or the signatures of the officers, directors or shareholders, (c), if by a partnership, by the duly authorized partners of the partnership on its behalf under seal by adoption of the word "SEAL" appearing next to the name of the partnership or the signatures of the partners or (d), if by a limited liability company, by the duly authorized members or managers on its behalf under seal by adoption of the word "SEAL" appearing next to the name of the limited liability company or the signatures of the members or managers, on the day and year first above written.

_____. (SEAL)
Global Properties and Development, L.L.C.
Mark E. Brenner
Manager

STATE OF _____
COUNTY OF _____

I certify that the following person personally appeared before me this day and acknowledged to me that the following person voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Name	Capacity
Mark E. Brenner	Manager, Global Properties and Development, L.L.C.

- I have personal knowledge of the identity of the principal;
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____; or
- A credible witness has sworn to the identity of the principal

Witness my hand and official stamp or seal on this the ____ day of September, 2009.

Notary Public

Print notary name: _____
(notary name must be exactly as on notary seal)

My commission expires: _____

[affix notary seal, which must be fully legible, below]

CONSENT OF MORTGAGEE

Branch Banking and Trust Company, the beneficiary of a North Carolina Deed of Trust and Security Agreement recorded in the Moore County Registry in Book 3361 at Page 215 (the "Deed of Trust") hereby (a) consents to, approves, and ratifies the execution and delivery of the Patio Homes Community Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for the Arboretum (the "Supplemental Declaration") and the recordation thereof in the Moore County Registry and (b) fully and unconditionally, as if the Supplemental Declaration has been recorded in the Moore County Registry prior to the Deed of Trust, subject and subordinate the Deed of Trust and the lien thereof to the provisions of the Supplemental Declaration.

[signature pages to follow]