

FOR REGISTRATION REGISTER OF DEEDS
 Judy D. Martin
 Moore County, NC
 June 16, 2016 12:22:48
 Book 4660 Page 443-470
 FEE: \$78.00
 INSTRUMENT # 2016008133

rs



INSTRUMENT # 2016008133

Prepared by: John M. May, Attorney at Law, 120 Applecross Road, Pinehurst, NC 28374

STATE OF NORTH CAROLINA
 COUNTY OF MOORE

RESTRICTIVE COVENANTS AND
 CONDITIONS FOR THE COTTAGES AT
 BALLYBUNION PARK

May

THESE RESTRICTIVE COVENANTS, AND CONDITIONS FOR THE COTTAGES

AT BALLYBUNION PARK, (the "Restrictive Covenants") are made as of
June 15, 2016 by TRI-CITY, INC., a North Carolina corporation ("**Developer**").

WITNESSETH:

WHEREAS, Developer is the owner of those certain residential building lots located in Moore County, North Carolina and known as the Ballybunion Park Cottages ("Ballybunion"), as to Lots 342R-349R as the same are more particularly shown on a plat thereof recorded in Plat Cabinet 16 Slide 742 and as to Lots 323, 325-335, 341 and 350-354 as more particularly shown on a plat recorded in Plat Cabinet 4 Slide 122 both of the Moore County Registry (individually a "Lot" and collectively the "**Lots**"); and

WHEREAS, the Lots which have previously been encumbered by the National Golf Club Covenants (as hereinafter defined) together with the provisions contained within these Restrictive Covenants shall at all times be subject and subordinate to the National Golf Club Covenants, and

June 8, 2016

each of the terms and provisions thereof shall be incorporated herein by this reference; provided, that in the event there shall be any direct conflict between these Restrictive Covenants and the National Golf Club Covenants, the National Golf Club Covenants shall control and the conflicting provision herein shall be of no further force or effect; and

WHEREAS, Developer plans to develop the Lots as a residential community with substantial concerns for the protection of Ballybunion consistent with the scope of development of National Golf Club; and

WHEREAS, Developer desires to provide for the continuing upkeep and maintenance of Ballybunion in an exceptional and first-class manner; and

WHEREAS, Developer deems it in the best interest of Ballybunion that the architecture, landscaping and design of residences located in Ballybunion be in harmony with a common plan of development as envisioned by Developer and the National Property Owners Association (the "NPOA"); and

WHEREAS, Developer desires to subject Ballybunion to the terms and conditions of Chapter 47F of the General Statutes of the State of North Carolina entitled "The Planned Community Act" (the "**Act**"); and

WHEREAS, Developer further desires to subject Ballybunion to certain protective covenants, restrictions, liens and charges as hereinafter set forth for the mutual benefit of Developer and succeeding property owners consistent with the values set forth above, and desires that said covenants, restrictions, liens and charges run with the land and be binding upon the Developer, its successors and assigns;

June 8, 2016

NOW, THEREFORE, Developer hereby declares that all of Ballybunion shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Ballybunion and which shall run with the property comprising Ballybunion and shall be binding on all parties having or acquiring any right, title or interest in Ballybunion or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

Section 1: “**Act**” shall mean the North Carolina Planned Community Act as set forth in Chapter 47F of the General Statutes of the State of North Carolina as the same may be amended from time to time.

Section 2: “**Architectural Review Board**” or “**ARB**” shall have the meaning as set forth in the National Golf Club Covenants.

Section 3: “**Bylaws**” shall mean the Bylaws of the Company as they now or may hereinafter exist.

Section 4: “**Charge**” shall have the meaning set forth in Section V-A hereof.

Section 5: “**Common Areas**” shall mean and refer to those properties so identified in the National Golf Club Covenants.

Section 6: “**Common Expenses**” shall mean and include those expenses identified in the National Golf Club Covenants.

Section 7: “**Company**” shall mean Ballybunion Park Maintenance Company.

June 8, 2016

Section 7.1: “Company Member” shall have the meaning set forth herein with respect to Ballybunion Park Maintenance Company and a Lot Owner’s membership therein. Every Owner shall be a Company Member; provided each Lot shall have only one membership.

Section 8: “**Developer**” shall mean and refer to Tri-City, Inc. its successors and those assigns to whom the rights of Developer are expressly transferred in whole or in part, by written instrument as required by North Carolina General Statutes Section 47F-3-104.

Section 9: “**Home**” or “**Cottage**” shall mean and refer to a detached, free-standing dwelling or place of residence (including casita, if applicable) and attached garage constructed upon a Lot within Ballybunion.

Section 10: “**Lot**” shall mean and refer to those twenty-six (26) plots of land designated on the Map and upon which a Home has been or may be constructed.

Section 11: “**Maps**” as to Lots 342R-349R shall mean that map recorded in Plat Cabinet 16 Slide 742 and as to Lots 323, 325-335, 341 and 350-354 shall mean that map recorded in Plat Cabinet 4Slide 122 of the Moore County Registry, as the same may be modified or supplemented from time to time.

Section 12: “**Member**” shall have the meaning as set forth in the National Golf Club Covenants. Every Owner shall be a Member.

Section 13: “**National Golf Club Covenants**” shall mean and refer to that certain Amended and Restated Declaration of Covenants and Restrictions for the National Golf Club Development dated as of April 8,, 1988 and recorded in Book 599 at Page 162 of the Moore County Registry and as thereafter amended and restated.

June 8, 2016

Section 14: “**NPOA ARB**” shall mean and refer to the committee appointed to oversee the development and enforcement of architectural and landscaping control standards and restrictions of National Golf Club as set forth in the National Golf Club Covenants

Section 15: “**Owner**” shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of Ballybunion, including contract sellers, but excluding those who have such interests merely as security for the performance of any obligation.

Section 16: “**Park**” shall mean the improvements to Lots 355, 356 and 357 made by the Developer and conveyed to the NPOA.

Section 17: “**Person**” shall mean and refer to an individual, corporation, partnership, association, trustee or other legal entity.

Section 18: “**Plans and Specifications**” shall mean and refer to the architectural elements and guidelines designed by Developer to control the overall quality and appeal of the Homes built on Lots within Ballybunion. Developer reserves the right to make modifications or changes to the Plans and Specifications at its discretion at any time hereafter.

Section 19: “**Property**” shall mean and refer to that certain real property shown on the Maps.

Section 20: “**Restrictive Covenants**” shall mean and refer to the Restrictive Covenants and Conditions for Ballybunion Park Cottages as the same may be amended and supplemented from time to time in accordance with the terms of this Declaration

ARTICLE II

Property Rights

June 8, 2016

Section 1: **Owner's Easements of Enjoyment:** Every Owner shall have a right to and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every designated Lot, all as set forth in the National Golf Club Covenants.

Section 2: **Delegation of Use:** Any Owner may delegate in accordance with the National Golf Club Covenants.

Section 3: **Maintenance of Common Areas:** Maintenance of the Common Areas shall be the responsibility of the NPOA as provided in the National Golf Club Covenants.

Section 4: **Parking Rights and Restrictions:** Adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles and other vehicles owned or controlled by such Owner, members of the Owner's family or guests or other invitees of the Owner, and neither the Owners nor their guests or invitees may park their automobiles, trucks, boats, trailers and other vehicles on the streets or Common Areas. No boats, trailers or commercial vehicles shall be stored, housed or parked on any Lot except within an enclosed garage.

ARTICLE III

Membership

Membership in the NPOA shall be governed by the National Golf Club Covenants.
Membership in the Company shall be governed by the By Laws of the Company.

ARTICLE IV

Voting Rights

Voting rights of Members of the NPOA are as set forth in the National Golf Club Covenants.
Voting Rights of Company Members are as set forth in the By Laws of the Company

ARTICLE V

June 8, 2016

Covenant for Assessments by NPOA

The provisions of the National Golf Club Covenants shall govern the payment of assessments to the NPOA.

ARTICLE V-A

Covenant for Charges by Company

Section 1: **Creation of the Lien and Personal Obligation of Charges:** The Developer, for each Lot owned within Ballybunion which may be hereafter created and subjected to the Restrictive Covenants, hereby covenants, and every other Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Company:

- a. Annual Charges due to the Company; and
- b. Special Charges as may be assessed by the Company for capital improvements; and
- c. Landscape Upgrade Monthly Charge for additional landscaping elements as applicable. The Developer desires to maintain uniformity in appearance and cost and an esthetically pleasing landscape design throughout Ballybunion. Each Owner shall select from one of several landscape design plan options and customize through the selection of one of several plant material options subject to approval of the Developer and the NPOA. Upgrades to the standard landscape design plans offered require the approval of the Developer and the NPOA and are subject to an additional monthly charge for the incremental maintenance cost associated with maintaining the addition of landscape plants and materials and shall apply to any and all additional upgrades either initially approved by the Developer and the NPOA or subsequently so approved regardless of

June 8, 2016

when installed by the Owner thereafter. The increase in the incremental fee shall be determined by the Company.

The Annual, Special, and Landscape Upgrade Charges, together with interest thereon, costs of collection thereof, and reasonable attorneys' fees as may be established by the Company, shall be a Charge on the land and shall be a continuing lien upon the Lot and improvements against which each such Charge is made. Each such Charge, together with such interest and costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the Charge became due. The personal obligation of an Owner for delinquent Charges shall not pass to his successors in title unless expressly assumed by them and then only with the consent of the Company. All Charges shall be shared equally by the Owners of each Lot; provided, however, Lots that have been built upon ("Improved Lots") shall pay a higher Charge than Lots that have not been built upon ("Unimproved Lot") as determined by the Board of Directors of the Company.

Section 2: **Purpose of Charges:** The Charges levied by the Company shall be used exclusively for enforcing the Restrictive Covenants and the rules of the Company; for providing the services and facilities for the purposes of or related to the use and enjoyment by all members of the NPOA of the Park, for the purpose of payment of Improved Lot common assessments due to the NPOA on the three (3) Lots on which the Park is constructed and for annual reserves to fund the future replacements of landscape materials, entrance signage, park amenities, park benches, irrigation, water lines, well and well pump system and other park features, for the cost of any liability insurance policy required for the Park all notwithstanding the NPOA's ownership and control of the

June 8, 2016

Park;, , for administrative, accounting and legal expenses of the Company, and for the maintenance and upkeep of all exterior landscaping of each Lot.

Section 3: **Amount of Charges:**

a. **Initial Charges:** Until December 31, 2016, the maximum monthly Charge shall be \$70.00 per Unimproved Lot and \$220.00 per Improved Lot subject to a Landscape Upgrade Charge when applicable.

b. **Increase by Company Board of Directors:** From and after the date specified in subparagraph (a) above, the annual Charge which may be established effective January 1 of each year by the Board of Directors may not be increased by more than ten percent (10%) of the prior year's Charge without a vote of the Owners as provided below.

c. **Increase by Owners:** From and after the date specified in subparagraph (a) above, the annual Charge may be increased by more than ten percent (10%) only by an affirmative vote of the Owners as provided in the By Laws who are voting in person or by proxy, at a meeting duly called for such purpose. Written notice of said meeting, setting forth the purpose of the meeting, shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of the meeting. The limitation herein set forth shall not apply to any increase in Charges undertaken as an incident to a merger or consolidation in which the Company is authorized to participate under its Articles of Incorporation.

d. **Criteria for Establishing Annual Charges:** In proposing the annual Charge for any year, the Board of Directors shall consider all current costs and expenses of the Company and any accrued debts and reserves for future needs. The Board of Directors shall fix the amount of the annual Charge against each Improved Lot and for each Unimproved Lot at least thirty (30) days in

June 8, 2016

advance of each annual Charge period. Written notice of the annual Charge shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors of the Company. The Company, upon demand and at any time, shall furnish a certificate in writing signed by an Owner of the Board of Directors of the Company setting forth whether the Charges on a specified Lot have been paid. A properly executed certificate of the Company as to the status of Charges on a Lot is binding upon the Company as of the date of its issuance. As provided in the By Laws, the Company will assess for capital replacements with a reserve fund as part of its Annual Charges to Owners. At a minimum, this annual reserve will equal the replacement amount of all depreciable assets in the Park and entry monument divided by the life expectancy of each of the assets.

Section 4: **Special Charges for Capital Improvements:** In addition to the annual Charge authorized above, the Company may levy, in any calendar year, a special Charge applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, repairs or replacement of a described capital improvements upon the Park and entry monument, including the necessary fixtures and personal property related thereto, and specifically including the water lines, well and well pump system and other utilities systems within the Park provided that any such Charge shall be approved as provided herein and in the By Laws of the Company by the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of such meeting, setting forth the purpose of the meeting, shall have been sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting.

Section 5: **Uniform Rate of Charge:** Both annual and special Charges must be fixed at a uniform rate for all Unimproved Lots and a separate uniform rate for all Improved Lots, on a per

June 8, 2016

Lot basis, and may be collected on a monthly, quarterly or annual basis as determined by the Board of Directors.

Section 6: **Quorum for an Action Authorized under Sections 3 and 4:** Whether a Quorum is present at any meeting of the members of the Company shall be determined as provided in the Company's By Laws.

Section 7: **Date of Commencement of Annual Charge:** The annual Charges provided for herein shall be paid in advance in monthly, quarterly or annual installments as determined by the Board of Directors and the payment of such shall commence as to each Lot on the day of the conveyance of such Lot by the Developer. Charges shall be prorated for any partial month.

Section 8: **Effect of Nonpayment of Charges: Remedies of the Company:** Any Charges or portion thereof which are not paid when due shall be delinquent. If the Charge or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the lesser of the rate of eighteen percent (18%) per annum and the maximum rate permitted by law. The Company may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against a Lot in the same manner as set forth in the National Golf Club Covenants for the foreclosure of liens for delinquent assessments, and, in either event, interest, costs and reasonable attorney's fees incurred in the prosecution of any such action shall be added to the amount of such Charge. No Owner may waive or otherwise escape liability for the Charge provided for herein by non-use of the Park or abandonment of a Lot.

Section 9: **Subordination of the Lien to Mortgages, Ad Valorem Taxes and NPOA Assessments:** The lien of the Charges provided for herein on any Lot shall be subordinate to the lien of any first mortgage, ad valorem taxes and NPOA assessments on such Lot. The sale or transfer of

June 8, 2016

any Lot shall not affect the Charge lien; however, the sale or transfer of any Lot pursuant to such mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Charges as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Charges thereafter becoming due or from the lien thereof.

Section 10: **Successor to Company:** The NPOA and BPMC have entered into a Memorandum of Understanding with respect to each party's obligation regarding the Park which provides in part that in the event either the NPOA or the BPMC fails to perform their respective obligations with respect to the Park (the "Failing Party") and such failure continues for a period of sixty (60) days after written notice of such failure is sent to the Failing Party, then at the option of the other party (the "Non Failing Party") to be exercised in the Non Failing Party's sole and absolute discretion, the Non Failing Party can assume the rights and obligations of the Failing Party hereunder including but not limited to the right to collect charges for the work required to be undertaken by the Non Failing Party and shall be entitled to seek from the Failing Party all costs of collection, including attorney's fees.

ARTICLE VI

Maintenance and Landscaping

The Company shall contract for the landscaping and maintenance for the exterior lawn and natural areas of each Lot located within Ballybunion which contract may be as determined from time to time by the Board of Directors of the Company. The expense of providing such services shall be shared by all Lot Owners as provided in Article V-A above. Each Owner shall be responsible for the exterior building and hard surface maintenance of each dwelling (including the casita where applicable) and garage located on a Lot, and agrees to maintain each dwelling (including the casita

June 8, 2016

where applicable) and each Lot in a good and acceptable manner. The Company shall be responsible for all landscaping maintenance of any areas surrounding an Owner's dwelling up and to the roadway adjoining each Lot. The Company's responsibility for landscaping maintenance only includes routine annual maintenance activities and is not intended to include irrigation installation or repairs, replacement of planting materials, or other capital improvements to the landscaped or natural areas on each Lot.

If, in the opinion of the Company, any Owner shall fail to maintain any dwelling or Lot in a manner which is reasonably neat and orderly or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the sole opinion of the Company, the Company in its discretion, by the affirmative vote of two-thirds (2/3) of the Members of the Board of Directors, and following ten (10) days' written notice to the Owner, may enter upon and make or cause to be made repairs to such improvements and perform such maintenance on the Lot as deemed appropriate. The Company shall have an easement onto and over each Lot for the purpose of accomplishing the foregoing. The reasonable cost incurred by the Company in rendering all such services, plus a service Charge of fifteen percent (15%) of such cost, shall be added to and become a part of the Charge to which such Lot is subject.

The Company may, with the written approval of Developer or its designee and as long as it has received the approval of the NPOA ARB to do so, set forth different landscape and architectural guidelines throughout Ballybunion, provided such differing guidelines and landscaping and architecture do not violate any of the provisions hereof or of the Bylaws of the Company, and the various areas of development remain in harmony with Ballybunion, as a whole.

June 8, 2016

Notwithstanding anything in the foregoing to the contrary, each of the Company (in the case of the Park) and any Owner (in the case of Lot(s)) shall abide by all regulations contained within the National Golf Club Covenants in maintaining the Lots at Ballybunion.

ARTICLE VII

Use Restrictions

Section 1: **Rules and Regulations:** Subject to the restrictions set forth within the National Golf Club Covenants, the Board of Directors of the Company shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot. Any rules and regulations formulated by the Company, along with all policy resolutions and policy actions taken by the Board of Directors of the Company, shall be recorded in a book of minutes of the Company which shall be maintained in a place convenient to the Owners and available to them for inspection during normal business hours. Subject to the restrictions set forth within the National Golf Club Covenants, the NPOA shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Park.

Section 2: **Use of Property:** Each Lot, the Home thereon and the Park shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the Bylaws:

a. All Lots and Homes shall be used solely for single family residential purposes and for purposes incidental or accessory thereto as approved by the NPOA and by the Developer or as otherwise provided herein.

b. No Lot may be subdivided.

June 8, 2016

c. Developer may use up to one (1) Home at any given time for offices and/or for sales or display purposes and each featured Builder [not to exceed three (3) at any given time] may also use up to one (1) home each owned by such Builder as a model home.

d. Nothing shall be kept and no activity shall be carried on in any Home or on the Park which will increase the rate of insurance, applicable to residential use, for the property surrounding Ballybunion or the contents thereof.

e. No Owner shall do or keep anything, or cause or allow anything to be done or kept, in his Home or in the Park which will result in the cancellation of insurance on any portion of Ballybunion, or the contents thereof, or which will be in violation of any law, ordinance, or regulation.

f. No waste shall be committed on any portion of the Park.

g. No Lots shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash, garbage or other waste materials shall not be burned or disposed of on any Lot and shall be kept in sanitary containers approved by the NPOA. All refuse collection shall be by a carrier or provider designated by the NPOA.

h. No immoral, improper, offensive or unlawful use shall be made of the property comprising Ballybunion, or any part thereof, and all valid laws, ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed.

i. Nothing shall be done in or to any Home or garage or in, to or upon any of the Park which will impair the structural integrity of any Home, garage or portion of the Park or which would impair or alter the exterior of any Home, structure, or portion thereof, except in the manner provided in this Declaration.

June 8, 2016

j. Subject to the provisions of subparagraph (c) above, no industry, business, trade, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained or permitted on any part of Ballybunion.

k. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Park except at the direction of and with the express written consent of the Company and the NPOA ARB.

l. The Park shall be used only for the purposes for which it is intended and reasonably suited and which are incidental to the use and occupancy of the Homes, subject to any rules or regulations that may be adopted by the NPOA.

m. Minimum square footage requirements shall be established for Ballybunion as determined by the NPOA ARB.

n. All dwellings shall satisfy the architectural guidelines promulgated by the NPOA ARB and the process for approval of home construction shall adhere to the NPOA ARB rules and those of the Developer.

o. Owners shall only contract with the architect that has been approved by Developer for design of Homes.

p. Owners shall only contract with one of the general contractors that have been approved by Developer and NPOA ARB for construction of Homes.

q. All Home construction is to be completed using the Plans and Specifications by Developer. Plans and Specifications are subject to modification by Developer from time to time. Owners may make changes to the Plans and Specifications with prior written approval first by Developer and then by NPOA ARB.

June 8, 2016

- r. All landscaping construction is to be completed using the Plans and Specifications for all Lots. Owners may make changes to the Plans and Specifications with prior written approval first by Developer and then by NPOA ARB.
- s. Owners shall make selections from the Plans and Specifications for building exterior materials, colors, elevation designs and landscaping materials that shall be approved first by the Developer and then by NPOA ARB.
- t. All mailboxes at Ballybunion shall conform to those approved in the architectural guidelines promulgated by the NPOA ARB.
- u. Owners shall take necessary steps to have any civil engineering or surveying completed on their Lot prior to any construction to demonstrate proper storm water drainage plan as part of the construction of the Home. The drainage plan must be submitted to the Developer prior to any construction activity. Owners will also be responsible for adhering to any storm water management requirements of the NPOA.
- v. No fencing shall be allowed on any Lot except as may be approved by the NPOA ARB and be of a type included within the architectural guidelines promulgated by the NPOA ARB. Prior to installing any fencing, any Lot Owner must submit a written request, including detailed plans and specifications, to the NPOA ARB.
- w. Construction on any Home or amenity within Ballybunion shall take place solely during the times provided by the NPOA ARB.
- x. Each of the Owners, the Company and Developer shall at all times comply with the requirements set forth in the National Golf Club Covenants. To the extent any of

June 8, 2016

the restrictions set forth in this Declaration shall conflict with those included within the National Golf Club, the National Golf Club Covenants shall control.

y. All members of the NPOA and their guests will have use of the Park subject to the rules and regulations established by the NPOA with respect to such use.

z. Those parking spaces located adjacent to the Park shall be solely for use of members of the NPOA and their guests incident to their use of the Park and shall not be used by Lot Owners or their guests.

Section 3: **Landscaping:** Once approved by the NPOA ARB and the Company, the Company shall be responsible for all landscaping maintenance of any initially installed landscaped or natural areas surrounding an Owner's dwelling up and to the roadway adjoining each Lot. Subject to NPOA approval, the Board shall establish standards and guidelines for the quality and quantity of the initial landscaping on each Lot as well as general guidelines relating to landscaping of each Lot which may include required and permitted sod as well as certain species which may or may not be used in connection with the landscaping.

Section 4: **Animals.** No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs and cats may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are kept in the Home of the Owner or in such other area as is approved by the Board. Further, the NPOA shall, pursuant to its rights set forth in the National Golf Club Covenants, maintain the power to regulate the maintenance of animals on any Lot within Ballybunion. Therefore, in addition to the regulations set forth herein, each Owner shall at all times comply with the regulations set forth therein.

June 8, 2016

ARTICLE VIII

Easements

Section 1: **Walks, Drives, Parking Areas and Utilities:** All of Ballybunion, including Lots and Park, shall be subject to a perpetual non-exclusive easement or easements in favor of all Owners of Lots as may be necessary for the repair and maintenance of water lines, sanitary sewers, storm drainage facilities, telephone, cable and electric power lines, and other public utilities as shall be established prior to subjecting Ballybunion to these Restrictive Covenants by the Developer or its predecessors in title. The Company and the NPOA shall have the power and authority to grant and to establish in, over, upon and across the Park such further easements as are requisite for the convenient use and enjoyment of Ballybunion Owners.

Section 2: **Reservation to Developer:** Every Lot shall be subject to an easement for entry and encroachment by the Developer until all of the Lots are sold by the Developer to third parties for the purpose of correcting any problems that may arise regarding grading and drainage or other potential matters. The Developer, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Further, Developer reserves the right to subject the property comprising Ballybunion to a contract with any public utility providing electrical service (the "Utility Provider") for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or continuing monthly payment to the Utility Provider by the Owner of each Lot.

Section 3: **Emergencies:** Every Lot and Home shall be subject to an easement for entry by the Company for the purpose of correcting, repairing or alleviating any emergency condition

June 8, 2016

which arises upon any Lot or within any Home and which endangers any Home or portion of the Park.

Section 4: **Utility Easements:** An easement is hereby established over all Lots and Park for the benefit of applicable governmental agencies for the setting, removing and reading of water, gas and electric meters, maintaining and replacing water, drainage and drainage facilities, maintaining and replacing gas and electric facilities, fire fighting, law enforcement, garbage collection and the delivering of mail.

Section 5: **Landscaping and Maintenance Easement:** An easement is hereby established in favor of the Developer and the Company, their agents and assigns over all Lots for the purpose of providing and maintaining landscaping, and for other activities reasonably relating to the maintenance of same.

Section 6: **Appurtenance Easements:** An easement is hereby established in favor of the Developer and the Owner of any Lot for the existence and maintenance for any appurtenance extending from a dwelling which may encroach upon an adjoining Lot, including but not limited to roofs, steps and heating and air conditioning units. The easement provided in Section 5 hereof shall be applicable to the maintenance or reconstruction of such appurtenances.

ARTICLE IX

Rights of Institutional Lenders

Section 1: The prior written approval of each institutional holder of a first deed of trust on Lots in Ballybunion will be required for the following:

June 8, 2016

- a. The abandonment or termination of the planned unit development except for abandonment or termination as provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
- b. Any material amendment to the Declaration or to the Bylaws of the Company.

Section 2: Upon written request, any institutional holder of a first deed of trust on a Lot will be entitled to:

- a. Inspect the books and records of the Company during normal business hours;
- b. Receive an annual financial statement of the Company within 90 days following the end of any fiscal year; and,
- c. Written notice of all meetings of the Company and be permitted to designate a representative to attend all such meetings.

Section 3: a. In the event of substantial damage or destruction of any Lot or any part of the Park, the institutional holder of any first mortgage on a Lot will be entitled to timely written notice of any such damage or destruction.

b. If any Lot or portion thereof or the Park or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first mortgage on a Lot will be entitled to timely written notice of any such proceeding or proposed acquisition.

c. The holder of the first mortgage on any Lot shall be given prompt notice of any default in the Lot mortgagor's obligation hereunder not cured within thirty (30) days of

June 8, 2016

each default, such notice to be directed to such mortgagee at its address shown on the recorded security instrument.

ARTICLE X

Rights Reserved by Developer

Pursuant to Section 47F-1-103 of the Act, Developer hereby reserves for its benefit the following rights:

- a. Completion of any improvements indicated on the Maps;
- b. Exercising any and all rights it may have as developer of Ballybunion;
- c. Maintaining sales offices, management offices, signs and advertising, and any model units Developer wishes to utilize in conjunction with such process;
- d. Using existing easements for the purpose of making improvements within Ballybunion or within real property; and
- e. Appointing and/or removing any officer(s) or Board members of the Company as defined in the Act, during a time of Developer control of the Board. In addition, Developer reserves the right to assign Developer's rights as provided in North Carolina General Statutes Section 47F-3-104.

ARTICLE XI

SALE OR OTHER ALIENATION OF LOTS (UNITS)

The provisions of Article 10 of the National Golf Club Covenants relating to the sale or other alienation of Lots (the "RFR") shall be fully enforceable with respect to the sale or other alienation of Ballybunion Lots. In the event the NPOA declines to exercise its RFR as to a Ballybunion Lot, then the provisions of Article 10 shall be equally applicable with respect to the right of the

June 8, 2016

Developer to acquire such Ballybunion Lot including without limitation that the notice requirements of Article 10 shall be read as requiring that the Developer to be provided the same written notice of sale as is required to be provided to the NPOA. Such RFR as to the Developer shall be exercised within ten (10) days after the NPOA determines that it will not exercise its RFR.

ARTICLE XII

Right of Repurchase

Section 1: Any Owner of an undeveloped Lot purchased from Developer, or its agent, shall commence construction of a Home on the Lot within forty eight (48) months of the date of recording of a deed to such Owner for such Lot (the "Required Building Time"). In the event an Owner who initially acquired his/her Lot from the Developer subsequently sells such Lot prior to construction a Home thereon to a second purchaser before the Required Building Time expires, on a one time only basis, the Required Building Time shall be extended to a total of seventy two (72) months calculated from the date of the original conveyance of the Lot by Developer. In order for the extended Required Building Time to apply, the subsequent sale of such Lot must be an arm's length transaction. Upon the commencement of such construction, the Owner shall cause such construction to be completed within twelve (12) months from the date such construction is commenced. For purposes of this Article XII, the term "commence construction" shall mean that: (i) approval of the building and landscape plans by the Developer and by the NPOA ARB; (ii) a building permit has been issued for the Home by the appropriate governmental agency; and (iii) construction of the Home has physically begun beyond site preparation. Completion of construction shall be deemed to have occurred upon (x) issuance of a certificate of occupancy for the Home on the Lot by the appropriate governmental

June 8, 2016

agency and (y) return of any such Owner compliance deposits or other notification by the NPOA ARB certifying that all obligations of Owner with respect to the construction of the Home have been completed.

Section 2: Each Owner agrees that if construction of a Home on any Lot has not commenced within the required time period, or, if once commenced, such construction has not been completed within the time period described above, Developer shall have the right, but not the obligation, to require the conveyance of such Lot to Developer or any third party designated by Developer by general warranty deed (subject to the same exceptions to title set forth in the deed of conveyance of such Lot to the Owner) for a total consideration equal to that portion of the Lot purchase price paid by Owner to Developer or its successor as of the date of such conveyance and if construction of the Home has started and has not been completed within the Required Building Time, then plus the cost of the Home construction incurred to date (the "Net Purchase Price"); provided, that the Net Purchase Price shall annually (beginning as of the Closing Date on which Purchaser acquired the Home Site and for the cost of home construction beginning on the date when the cost is incurred) be increased by a percentage equal to the increase (but not the decrease) from the immediately preceding calendar year in the Consumer Price Index South East Region (the "CPI") as published by the Bureau of Labor Statistics of the United States Department of Labor or such other similar index as is then published by the Bureau of Labor Statistics if the CPI is not then published. Closing costs for any such conveyance shall be payable by each party as is customary in similar real estate transactions within Moore County, North Carolina. Seller may exercise or waive its right of repurchase at its sole discretion at any time during the applicable timeframe. Any waiver of its rights

June 8, 2016

in one instance does not preclude its right of repurchase in a future instance on other Lots.

Section 3: Upon the issuance of a certificate of occupancy for a Home on any Lot, Developer's right to repurchase as described in this Article shall automatically terminate; provided, however, that upon the issuance of the certificate of occupancy and upon the submission to Developer of a written request by Owner or Owner's successor-in-title and a release in form and content satisfactory to Developer, Developer shall provide to Owner an executed release of its right to repurchase in recordable form, provided further that neither the issuance nor recordation of any such release shall be necessary to terminate such right to repurchase. Unless earlier exercised, released or terminated in accordance with the terms hereof, Developer's right to repurchase hereunder shall automatically expire (84) months after the date of initial conveyance of the Lot by Developer. Notwithstanding anything to the contrary contained herein, the right to repurchase a Lot as set forth herein is subordinate to any first priority mortgage securing a bona fide construction loan for the Lot.

Section 4: Developer may exercise or waive its right of repurchase at its sole and exclusive discretion at any time during the applicable timeframe on a per Lot basis. Any waiver of its rights in one instance does not preclude its right of repurchase in a future instance on other Lots.

ARTICLE XIII

General Provisions

Section 1: **Enforcement:** The Company or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and

June 8, 2016

charges now or hereafter imposed by the provisions of these Restrictive Covenants. Failure of the Company or of an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2: **Severability:** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3: **Amendment:** The covenants and restrictions of these Restrictive Covenants shall run with and bind the land for a term of twenty (20) years from the date these Restrictive Covenants are recorded, after which time they shall be automatically extended for successive periods of ten (10) years. These Restrictive Covenants may be amended by the Developer in its sole discretion for a period of seven (7) years from the date of recording by the recording of an Amendment in the Office of the Register of Deeds of Moore County which has been executed by Developer or assignee or designee. Thereafter, these Restrictive Covenants may be amended only by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Company are allocated, or by the Developer if necessary for the exercise of any reserved development right.

Section 4: **Conflict:** In the event of any irreconcilable conflict between these Restrictive Covenants and the Bylaws of the Company, the provisions herein shall control. In the event of any irreconcilable conflict between these Restrictive Covenants and the Bylaws of the Company and the Articles of Incorporation of the Company, the provisions of the By Laws and the Articles of Incorporation of the Company shall control. In the event of any conflict between these Restrictive

June 8, 2016

Covenants and the National Golf Club Covenants, the provisions of the National Golf Covenants shall control.

Section 5: Assignment: The Developer shall have the right but not the obligation to assign all of Developer's rights, interest and benefits owned by Developer herein to the Company at any point in time hereafter. All of Developer's rights, interest and benefits herein assigned shall be subject to and subordinate to all rights of the NPOA pursuant to The National Golf Club Covenants.

(The remainder of this page has been intentionally left blank; signature page follows)

June 8, 2016

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed in its corporate name by its duly authorized officers and its corporate seal affixed hereto, the day and year first above written.

DEVELOPER:

TRI-CITY, INC.

By: Claudia S. Robinette
Name: Claudia S Robinette
Its: President

STATE OF NORTH CAROLINA

COUNTY OF Richmond

I, Amanda A McGee, a Notary Public of the County and State aforesaid, certify that Claudia S. Robinette either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that (s)he is President [title of officer] of TRI-CITY, INC., a North Carolina corporation, and that (s)he, as President [title of officer] being authorized to do so, voluntarily executed the foregoing on behalf of the corporation for the purposes stated therein.

WITNESS my hand and official stamp or seal, this 15 day of June, 2016.

Amanda A McGee

Notary Public

My Commission Expires: 4/18/20

