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FOR REGISTRATION REGISTER OF DEEDS  
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Brief Description for Index: Amended and Restated Cotswolds Declaration

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RESTRICTIONS, CHARGES, LIENS, AND RESERVATIONS OF COTSWOLD OF PINEHURST**

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RESTRICTIONS, CHARGES, LIENS, AND RESERVATIONS OF COTSWOLD OF PINEHURST** is made on this the 24 day of September, 2004, by and amongst **Alimax, L.L.C.**, a limited liability company organized under the laws of the State of North Carolina (hereinafter the "Declarant"), **The Cotswold Townhomes Association**, a non-profit corporation organized under the laws of the State of North Carolina (hereinafter the "Old Association"), and **Cotswold of Pinehurst Homeowners Association, Inc.**, a non-profit corporation organized under the laws of the State of North Carolina (hereinafter the "New Association").

**WITNESSETH**

**WHEREAS**, Cotswold Associates of Pinehurst, an unincorporated joint venture, recorded that certain Deed of Trust for the benefit of Mid-South Bank and Trust Company (hereinafter the "Mid-South Deed of Trust") in Book 620, Page 453, in the Office of the Register of Deeds of Moore County, North Carolina, secured by the Original Project Area;

**WHEREAS**, Cotswold Associates of Pinehurst, an unincorporated joint venture,  
**WHEREAS**, Cotswold Associates of Pinehurst, an unincorporated joint venture,  
recorded that certain Declaration of Covenants, Conditions and Restrictions of  
Cotswold of Pinehurst in Book 620, Page 457, in the Office of the Register of Deeds of  
Moore County, North Carolina, (hereinafter the "Old Declaration") and thereby  
subjected the real property described therein (hereinafter the "Original Project Area")  
to the terms and conditions thereof;

**WHEREAS**, Cotswold Associates of Pinehurst, an unincorporated joint venture,  
caused to be incorporated under North Carolina law, the Old Association as a non-  
profit corporation for the purpose of exercising and performing the functions as  
provided in the Old Declaration;

**WHEREAS**, O. Tracy Parks III, as trustee pursuant to the Mid-South Deed of Trust,  
thereafter released certain lots and common areas from the Mid-South Deed of Trust  
pursuant to instruments recorded in the Office of the Register of Deeds of Moore  
County, North Carolina;

**WHEREAS**, pursuant to instruments recorded in Book 621, Page 561, Book 679, Page  
544, Book 714, Page 496, Book 690, Page 426, Book 754, Page 240, and Book 1263,  
Page 501, in the Office of the Register of Deeds of Moore County, North Carolina, the  
Old Association owns certain common areas and facilities dedicated to the common  
use and enjoyment of the owners of the real property subject to the Old Declaration;

**WHEREAS**, Centura Bank, as successors in interest to Mid-South Bank and Trust  
Company, foreclosed upon the Mid-South Deed of Trust by and through Spruillco, Ltd.  
as successor trustee, and, pursuant to an instrument recorded in Book 1244, Page  
207, in the Office of the Register of Deeds of Moore County, North Carolina, Centura  
Bank assumed title to the (a) Original Project Area less and except therefrom certain  
lots and common areas released prior thereto and (b) New Development Area (as  
hereinafter defined);

**WHEREAS**, pursuant to an instrument recorded in Book 1401, Page 156, in the Office  
of the Register of Deeds of Moore County, North Carolina, Declarant owns the (a) New  
Development Area (as hereinafter defined), (b) ±1.295 acre tract designated, for  
identification purposes only, as "Pool," "Future Clubhouse," "Parking," and "Tennis  
Courts," and (c) ±0.390 acre tract designated, for identification purposes only, as

"Croquet Court," all as shown on a map recorded in Plat Cabinet 5, Slide 355, in the "Croquet Court," all as shown on a map recorded in Plat Cabinet 5, Slide 355, in the Office of the Register of Deeds of Moore County, North Carolina (hereinafter the "Recreational Common Elements");

**WHEREAS**, Declarant has caused to be incorporated under North Carolina law, the New Association as a non-profit corporation for the purpose of exercising and performing the functions as provided herein;

**WHEREAS**, the Old Association, the New Association, and the Declarant negotiated the terms of a merger of (a) the planned community subject to the Old Declaration and the planned community subject to the Declaration (as hereinafter defined) pursuant to and subject to the Declaration as amended hereby and (b) the Old Association and the New Association pursuant to which the Old Association shall be the merged corporation and the New Association shall be the survivor corporation;

**WHEREAS**, Declarant anticipates construction on the New Development Area (as hereinafter defined) of single family attached and detached townhomes that are architecturally consistent with the Residence Units (as hereinafter defined) erected upon the Original Project Area (as hereinafter defined) and the New Development Area (as hereinafter defined);

**WHEREAS**, pursuant to Section 3 of Article XV of the Old Declaration, the Old Declaration is subject to amendment by an instrument signed by the owners of not fewer than two-thirds (2/3) of the lots subject thereto;

**WHEREAS**, more than two-thirds (2/3) of the owners of the lots subject to the Old Declaration voted on March 2, 2004 (a) to merge the Old Association and the New Association, (b) to adopt the North Carolina Planned Community Act as set forth in Chapter 47F of the North Carolina General Statutes and as amended and as recodified from time to time and at any time, and (c) to amend and restate the Old Declaration as hereinafter set forth;

**WHEREAS**, pursuant to Section 19.3 of the Declaration of Covenants, Conditions, Easements, Restrictions, Charges, Liens and Reservations of Cotswold of Pinehurst recorded in Book 1762, Page 99, in the Office of the Register of Deeds of Moore County, North Carolina, (hereinafter the "New Declaration"), the New Declaration is

subject to amendment by an instrument signed by the owners of not fewer than two-thirds (2/3) of the lots subject thereto;

**WHEREAS**, more than two-thirds (2/3) of the owners of the lots subject to the New Declaration voted on April 2, 2004 (a) to merge the Old Association and the New Association, (b) to adopt the North Carolina Planned Community Act as set forth in Chapter 47F of the North Carolina General Statutes and as amended and as recodified from time to time and at any time, and (c) to amend and restate the New Declaration as hereinafter set forth;

**NOW, THEREFORE**, the Old Association, the New Association, and the Declarant—joined by the owners, pursuant to the aforesaid actions, of lots subject to the Old Declaration and the New Declaration—hereby do submit the Existing Property (as hereinafter defined), including any improvements to be located thereon, to this Amended and Restated Declaration—in lieu of the Old Declaration and the New Declaration—so that the Existing Property shall be held, sold, conveyed and occupied subject to the provisions, covenants, conditions and restrictions contained herein, which shall run with the real property and be binding on all parties having any right, title or interest in the Existing Property or any part thereof, and their heirs, administrators, successors and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE 1**

### **DEFINITIONS**

The following words and terms when used in this Declaration and Bylaws and any supplemental declaration and Bylaws (unless the context shall clearly indicate otherwise) shall have the following meanings:

**1.1 Allocated Interest.** “Allocated Interests” means the common expense liability and votes in the Association allocated to each Lot. Each Lot created subject to this Declaration shall be allocated one (1) vote.

**1.2 Architectural Review Board (abbreviated “ARB”).** “Architectural Review Board” means the committee of five (5) individuals appointed annually by the

Board to carry out the duties herein assigned to said Architectural Review Board; Board to carry out the duties herein assigned to said Architectural Review Board; provided, however, that, until the earlier of (a) one hundred and twenty days (120) days after conveyance of seventy-five percent (75%) of Lots (including Lots which may be created by additions authorized under Article 2.2—which, for purposes of projected future development, shall be deemed to be fifty-four (54) Lots—to Owners other than the Declarant or developers of Declarant Development Parcels, (b) two (2) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business, and (c) two (2) years after any reserved Declarant Development Right to add new Lots under Article 2.2 was last exercised (hereinafter the “Declarant Protection Period”), the Declarant shall not be required, unless Declarant proposes to erect Residential Units that are inconsistent—in conformity with and harmony of external design and materials—with extant adjacent Residential Units, to submit proposals to the ARB for matters that are otherwise within the scope of the jurisdiction of the ARB or to secure the approval of the ARB for matters that are otherwise within the scope of the jurisdiction of the ARB.

**1.3 Assessments.** “Assessments” means the same as dues levied by the Association as more specifically provided in Article 7.

**1.4 Association (also known as “New Association”).** “Association” means Cotswold of Pinehurst Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns including, by merger, the Old Association.

**1.5 Bylaws.** “Bylaws” means such governing regulations as are adopted for the regulation and management of the Association, including such amendments thereof as may be adopted from time to time and recorded.

**1.6 Board.** “Board” means a board of natural individuals of the number stated in the Bylaws, who need not be Owners, which constitute the Board of Directors of the Association and who shall manage the business, operations and affairs of the Association on behalf of the Members.

**1.7 Common Elements.** “Common Elements” means the common areas and facilities owned by the Association and dedicated to the common use and enjoyment of the Owners, or such other easements and areas for which the Association has maintenance responsibility, as more specifically provided in Article 8.

**1.8 Common Expenses.** "Common Expenses" means the expenses of the Association in providing for the acquisition, construction, management, maintenance and care of Association Property, the Common Elements and the Association's maintenance obligations as more particularly provided in Article 7.

**1.9 Declarant.** "Declarant" means Alimax, L.L.C., a North Carolina limited liability company, and its successors and assigns in interest in the Planned Community, if such successor or assign should acquire more either a Development Parcel or more than one undeveloped Lot from the Declarant for the purpose of development; provided, however, that nothing herein shall impose upon—nor shall anything herein be construed to impose upon—Alimax, L.L.C. any of the rights or obligations of Cotswold Associates of Pinehurst, an unincorporated joint venture, or its successors and assigns in interest pursuant to the Old Declaration. Alimax, the Old Association, and the New Association hereby agree and acknowledge that Alimax, L.L.C. shall effect a transfer of (a) the New Development Area and (b) its rights and obligations as Declarant hereunder to Planet Development, LLC, a North Carolina limited liability company, after the approval and recordation hereof.

**1.10 Declaration.** "Declaration" means this instrument and any amendments thereto including, but not limited to, those by which the Planned Community is expanded.

**1.11 Declarant Development Rights.** "Declarant Development Rights" means any right or combination of rights reserved by the Declarant in this Declaration, which may not be altered by the Members, and exercised pursuant to the terms of this Declaration, within the term set forth in this Declaration, (a) to add real estate within the New Development Area to the Planned Community; (b) to create Lots and Common Elements within the New Development Area; (c) to convert Lots within the New Development Area into Common Elements; (d) to complete improvements within the New Development Area; (e) to maintain sales offices, management offices, signs advertising the Planned Community and models; (f) to use easements through the Common Elements for the purpose of making improvements within the Planned Community or within real estate which may be added to the Planned Community, and (g) to appoint one member of the Board until Declarant no longer owns any Lots.

**1.12 Dispose or Disposition.** "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a Lot but does not include the transfer or release of a security interest.

**1.13 Development Parcel(s).** "Development Parcel(s)" means those unimproved parcels or tracts of land conveyed by the Declarant to third parties under this Declaration permitting (a) the division of such parcel or tract into smaller land units as Lots for development or (b) the construction of Residence Units thereon. Any such conveyance shall contain a reference to this subsection.

**1.14 Drainage.** "Drainage" means the removal of surface water or ground water from land by drains, grading or other means and includes control of runoff to minimize erosion and sedimentation during and after construction or development and likewise includes undertaking those measures necessary for water supply preservation for prevention or alleviation of flooding.

**1.15 Foreclosure.** "Foreclosure" means the exercise of the rights of the holder of any mortgage or other instrument creating a security interest in a Lot.

**1.16 Identifying Number.** "Identifying number" means a symbol on the recorded plat of any phase of the Property that identifies only one Lot in the Planned Community.

**1.17 Improvements.** "Improvements" means all Structures or construction of any kind that alters the initial physical appearance of a Lot, including, without limitation, any building, outbuildings, roads, driveways, parking areas, retaining walls, loading areas, utilities, lawns, fence, wall, sign, paving, grading, parking and building additions, alteration, screen enclosure, pool, sewer, drain, disposal system, decorative building, landscaping or landscape device (including existing and planted trees and shrubbery) or object together with any construction work or treatment done or applied to a Lot in connection therewith.

**1.18 Lease.** "Lease" means all leases, subleases and rental contracts, whether oral or written.

**1.19 Limited Common Element.** "Limited common element" means a portion of the Property allocated by the Declaration for the exclusive use of one or

more, but fewer than all, of the Lots. Any exterior steps, garage, parking space, patio, more, but fewer than all, of the Lots. Any exterior steps, garage, parking space, patio, deck, driveway, balcony, storage facilities, terraces, verandas and landscaping, designed to serve a single Residence Unit, but located outside the Lot's boundaries, are deemed to be Limited Common Elements allocated exclusively to that Residence Unit.

**1.20 Lot(s).** "Lots(s)" means any plot of land designated with an Identifying Number upon any recorded subdivision map of a portion of the Planned Community. A Lot shall be intended for use as the site for one (1) single family detached or attached dwelling unit; provided, however, that, in the event of construction of attached Residence Units, no single Lot, Improvement or Structure shall include more than four (4) Residence Units. A Lot shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently completed to reasonably permit habitation thereof and will thereafter be subject to assessments as improved property as a Residence Unit. The term Lot is synonymous with the term "Lot" as used in the Planned Community Act (Chapter 47F of the North Carolina General Statutes) and also is used interchangeably with the term "Unit" as used in the conveyances by the Declarant to an Owner.

**1.21 Majority.** "Majority" means any number of votes that is greater than fifty percent (50%) of the applicable votes.

**1.22 Master Plan or Development Plan.** "Master Plan" or "Development Plan" means the drawings which represent the conceptual research plan for the future development of the Planned Community, held by the Declarant and made available for inspection by prospective land purchasers. Since the concept of the future development of the undeveloped portions of the Planned Community retained by, and remaining in the Declarant's ownership, is subject to continuing revision and change at the discretion the Declarant, present and future references to the "Master Plan" by the Declarant, its employees or agents shall be reference to the latest revision thereof. In addition, no implied reciprocal covenants shall arise with respect to lands that have been retained by the Declarant for future development restricting their uses. The Declarant shall not be bound by any development plan, use or restriction of use shown on any Master Plan, and may at any time change or revise said Master Plan.

None of the proposed facilities reflected on any Master Plan need be built. The None of the proposed facilities reflected on any Master Plan need be built. The construction of any proposed facilities is dependent on market conditions and the economic viability of the sale of Lots in the Planned Community.

**1.23 Member.** "Member" means every person or entity who holds membership in the Association. Declarant shall be a Member of the Association from and after the date of recordation of this Declaration.

**1.24 Mortgage.** "Mortgage" means either a deed of trust or a mortgage or any instrument creating a security interest in a Lot.

**1.25 Mortgagee.** "Mortgagee" includes any grantee in or holder of a Mortgage, or the beneficiary of a Deed of Trust, or other similar security interest.

**1.26 New Development Area.** "New Development Area" means that property owned by Declarant as recorded in Book 1401, Page 0156, in the Office of the Register of Deeds of Moore County, North Carolina, together with any other tract(s) or parcel(s) that are contiguous to the New Development Area and are subsequently acquired by the Declarant and subjected to the terms of this Declaration, less and except therefrom the Recreational Common Elements.

**1.27 Occupant.** "Occupant" means any person who occupies, or who has the right to occupy, all or a part of any Lot that is a part of the Property, whether such occupancy or right of occupancy is based on ownership, lease, license or easement.

**1.28 Offensive or Noxious Activity.** "Offensive or noxious activity" or behavior includes, but is not limited to, a public nuisance or nuisance per se and also includes any behavior or activity which is inconsistent with both the pleasurable use of the Planned Community by a majority of the residents and their reasonable expectations of enjoying their property and the available amenities and natural surroundings free of boorish, rude, excessively noisy, crude, tasteless behavior, flashing lights, racing vehicles, radio, hi-fi or electronic music distractions, etc. or other similar behavior curtailing the pleasure of use of the natural environment and Common Elements of the Planned Community. Musical or other entertainment, concerts, festivals, competitions or shows conducted under permit from the Declarant shall not constitute offensive or noxious activity or behavior unless such permit is withdrawn by the Declarant.

**1.29 Old Declaration.** "Old Declaration" means the Declaration of Covenants, Conditions and Restrictions of Cotswold of Pinehurst in Book 620, Page 457, in the Office of the Register of Deeds of Moore County, North Carolina.

**1.30 Original Project Area.** "Original Project Area" means that property subjected by Cotswold Associates of Pinehurst to that certain Declaration of Covenants, Conditions and Restrictions of Cotswold of Pinehurst recorded in Book 620, Page 457, in the Office of the Register of Deeds of Moore County, North Carolina.

**1.31 Owner or Lot Owner or Unit Owner.** "Owner" or "Lot Owner" or "Unit Owner" means a person who has acquired by disposition fee simple title to any Lot but shall not include a person having such an interest merely as security for the performance of an obligation. The Declarant and any mortgagee are excluded from being an "Owner" or "Lot Owner" or "Unit Owner" unless and until such Declarant and mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

**1.32 Person.** "Person" means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

**1.33 Planned Community.** "Planned Community" means real estate within the scope of the Original Project Area with respect to which any person, by virtue of his ownership of a Lot, is expressly obligated by this Declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve or benefit other Lots, the Common Elements, or other obligations of the Association described in this Declaration. The term Planned Community is used interchangeably with the term "Cotswold of Pinehurst" within this Declaration.

**1.34 Property.** "Property" means the Existing Property as defined in Article 2.1 and any additions or replacements that may be brought by the Declarant, at its option, within the scheme and jurisdiction of this Declaration, including the Lots and the Common Elements, together with the buildings and all other improvements thereon, and all easements and rights appurtenant thereto, which are now or hereafter used in connection with the ownership and use of said land and improvements.

**1.35 Reasonable Attorneys Fees.** "Reasonable attorney's fees" means attorney's fees actually incurred without regard to any limitations on attorney's fees that may be included in any section of the North Carolina General Statutes other than the North Carolina Planned Community Act and based on the following factors: (a) the novelty and difficulty of the questions and issues involved; (b) the likelihood that the acceptance of employment by the attorney for the Association will preclude legal representation of other parties; (c) fees customarily charged in this locality for similar legal services; (d) the amount involved and the results obtained; (e) the time limitations imposed by the Association or the circumstances; (f) the nature and length of any previous professional relationship with the Association; and (g) the attorney's experience, qualifications, reputation, and the skill requisite to perform the necessary legal services. The rate and/or amount agreed to between the Association and any attorney retained by the Association shall be presumed to be reasonable.

**1.36 Recorded.** "Recorded" means made a matter of public record by filing same in the applicable Office of the Register of Deeds or Clerk of Court, the filing place to be determined by the type of document to be recorded.

**1.37 Recreational Common Elements.** "Recreational Common Elements" means the (a) ±1.295 acre tract designated for identification purposes only as "Pool," "Future Clubhouse," "Parking," and "Tennis Courts" and (b) ±0.390 acre tract designated for identification purposes only as "Croquet Court," all as shown on a map recorded in Plat Cabinet 5, Slide 355, in the Office of the Register of Deeds of Moore County, North Carolina, and any further Recreational Common Elements subsequently dedicated to the Association as such or for recreational purposes.

**1.38 Regime.** "Regime" means a section or portion of the Property brought within the scheme of this Declaration for the purposes of levying assessment upon the Lots and Owners. The Property within a Regime shall consist of Lots, together with any Limited Common Elements, which have similar characteristics and expenses for maintenance and operation. All Owners of Lots within a specific type of Regime, as designated by Declarant, shall be assessed the same annual amount for assessment established pursuant to the provisions herein. Different Regimes within the real property located in Mineral Springs Township, Moore County, North Carolina, and

more particularly described as Cotswold of Pinchurst, Phase II, as shown on plat more particularly described as Cotswold of Pinchurst, Phase II, as shown on plat thereof recorded in the Office of the Register of Deeds of Moore County, North Carolina in Plat Cabinet 8, Slide 550, may, however, at Declarant's sole discretion, have additional assessments due to type of Lots or the presence of Limited Common Elements within that Regime.

**1.39 Residence Unit.** "Residence Unit" means the improvements erected on a Lot for use and occupancy as one single family dwelling and any exterior steps, garage, parking space, patio, deck, driveway, balcony, storage facilities, terraces, verandas and landscaping located on the Lot, and the Lot upon which said building and improvements are located.

**1.40 Security Expenses.** "Security Expenses" means all fees and expenses incurred by the Association for any security purpose associated with the Planned Community, including but not limited to erection, purchase and maintenance of gatehouses, gates, perimeter fencing, vehicles, equipment, personnel or contracts with providers of such services, equipment and facilities.

**1.41 Shall.** "Shall" indicates a mandatory requirement, condition, or obligation; in contrast, the term "may" indicates a permissive action.

**1.42 Street.** "Street" means any street, highway or other thoroughfare that lies within the Planned Community and is shown on a recorded plat of any phase of the Planned Community, whether the same is designated as street, avenue, boulevard, drive, place, court, road, terrace, way, circle, lane, walk, view or other similar designation. All such streets comprise a portion of the Common Elements.

**1.43 Structure.** "Structure" means any construction, object, projection or piece of work artificially built up or composed of parts joined together in some definite manner, which is erected or shaped on the Property, including but not limited to Residence Units, buildings, fences, walls, bridges, signs, blinds, tennis courts, swimming pools, tents, gazebos, greenhouses, garage facilities or other outbuildings, signs, abutments, ornamental projections, exterior fixtures, shaped earth as a masonry structure, lights, or any device which might obstruct or interfere with the quality of a view from the property.

**1.44 Use of Land or Intended for Use.** "Use of Land" or "Intended for Use"

**1.44 Use of Land or Intended for Use.** "Use of Land" or "Intended for Use" means the use designated in the deed of conveyance of a parcel or space or by separate declaration of covenants designating the use for which any particular parcel of land is restricted to in such declaration incorporated by reference to a particular recorded declaration of covenants in deeds by which the Declarant has conveyed such land. Reference to "uses" of land, or description of parcels on maps, master plans, and promotional material shall not constitute a designation of use for purposes of this Declaration nor shall such reference create any obligation for the Declarant.

**1.45 Use or Used for Residential Purposes.** "Use or Used for Residential Purposes" means to be used as one's residence or normal and customary place of abode and shall not include any use for business or commercial purposes. The use of a portion of a Residence Unit as a home office shall be considered a residential use: (1) if such use does not create more than very occasional customer or client traffic to and from the Residence Unit and is otherwise permitted by any applicable Zoning Ordinance; (2) if the Residence Unit's address is not held out or advertised in any way as a business address; (3) no sign, symbol, logo, or name plate identifying such business is affixed to the exterior of the Residence Unit or visible from the exterior of the Residence Unit; and (4) except where the approval of the Association has been given to such use.

**1.46 Utility Area.** "Utility Area" means those tracts or parcels of the properties set aside by Declarant, at its sole option, for maintenance buildings, water wells and appurtenant facilities, mail facilities and the installation of utility systems to serve the remainder of the Property. Utility systems shall include, but not be limited to, water, sewer, telephone, electricity, cable and gas. The Utility Areas may be conveyed by Declarant to a municipality or to public or private utility companies that operate and maintain such systems. Utility Areas shall be accessible by easements of ingress, egress and regress reserved herein over the Property if not located on a public or private street. At the option of the Declarant, any or all of a Lot may be used as a Utility Area.

**ARTICLE 2**

**ARTICLE 2**

**PROPERTY SUBJECT TO DECLARATION**

**2.1 Existing Property.** The Property which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied under this Declaration and within the jurisdiction of the Association, is located in Mineral Springs Township, Moore County, North Carolina, and is more particularly described as (a) the Original Project Area, (b) Cotswold of Pinehurst, Phase II, as shown on plat thereof recorded in the Office of the Register of Deeds of Moore County, North Carolina in Plat Cabinet 8, Slide 550, (c) Cotswold of Pinehurst, Phase II, as shown on plat thereof recorded in the Office of the Register of Deeds of Moore County, North Carolina in Plat Cabinet 8, Slide 590, (d) Cotswold of Pinehurst, Phase II, as shown on plat thereof recorded in the Office of the Register of Deeds of Moore County, North Carolina in Plat Cabinet 9, Slide 187, (e) Cotswold of Pinehurst, Phase II, as shown on plat thereof recorded in the Office of the Register of Deeds of Moore County, North Carolina in Plat Cabinet 9, Slide 33, (f) Cotswold of Pinehurst, Phase II, as shown on plat thereof recorded in the Office of the Register of Deeds of Moore County, North Carolina in Plat Cabinet 10, Slide 805, and (g) Cotswold of Pinehurst, Phase II, as shown on plat thereof recorded in the Office of the Register of Deeds of Moore County, North Carolina in Plat Cabinet 11, Slide 83.

**2.2 Additions to Existing Property.** Additional land within the New Development Area may be brought within the scheme and operation of this Declaration and the jurisdiction of the Association by the Declarant without the consent of the Association or any Member in the following manner:

**2.2.1** The area of the Property subject to this Declaration may be increased by filing with the Moore County Register of Deeds, plats of additional phases within (a) the New Development Area and (b) that certain ±3.11-acre tract described in Book 641 at Page 33 in the Office of the Register of Deeds of Moore County and the subsequent conveyance of any Lot by the Declarant in such phase by reference to such plat and this Declaration, which shall then extend the scheme of the Declaration to all property shown on the plat of that phase, except for any areas marked "Reserved" or such areas of similar nomenclature. No other land within the New Development Area or vicinity of the New Development Area shall be subject to this Declaration unless the provisions of

this section are complied with, it being intended that this Declaration may not be construed or considered as a scheme for the development of any land other than that shown on the then existing and recorded plats for each phase by which at least one of the Lots shown thereon has been conveyed by reference to such plat and this Declaration.

### ARTICLE 3

#### USE OF PROPERTY

**3.1 Use Restrictions.** The use of the Property, the Lots, the Residence Units and Common Elements shall be in accordance with the following provisions as long as this Declaration remains in effect.

**3.1.1 Single Family Residence.** The Lots and any building or Structure now or hereafter erected on a Lot shall be occupied and used for single family residence purposes only, and no building shall be erected, altered, placed or permitted to remain on any Lot other than one single detached or attached dwelling with not fewer than one thousand nine hundred and fifty (1,950) total interior square feet per Residence Unit, not exceeding two stories and an attic (finished or unfinished) in height, a basement (finished or unfinished), a garage for not more than three cars (which may include guest or employee quarters) and appropriate outbuildings incident to the single family residential use of the premises. Each of the Lots and any permitted Residence Units constructed thereon shall be occupied only by the Owner (or Owners), his family, his servants and guests, or lessees, and shall be used only as a single family residence and for no other purpose. No Lot or Residence Unit may be divided or subdivided into a smaller unit nor any portion thereof separately sold or otherwise transferred; provided that Lots or portions thereof may be combined to form larger parcels than originally platted. Lease or rental to one or more tenants of a Lot or Residence Unit for residential purposes, subject to the other provisions of this Declaration, shall not be considered a violation of this covenant.

**3.1.2 Nuisances.** No nuisances shall be allowed upon any Lot nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents. All parts of the

Common Elements, and the Lots or Residence Units shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate. No damage to or waste of the Common Elements, or any part thereof, shall be committed by any Owner or his family, visitors, guests, servants, lessees, agents or invitees, and each Owner shall indemnify and hold the Association and the other Owners harmless against all losses resulting from any such damage or waste. No Lot Owner shall make or permit any use of his Lot, or make any use of the Common Elements, which will violate the provisions of the general documents or any insurance policy covering the Property.

**3.1.3 Lawful Use.** No immoral, improper, offensive or unlawful use shall be made of any part of the Property, and all applicable laws, zoning ordinances and regulations of all governmental bodies shall be observed. The expense of complying with any such laws, ordinances or regulations which compliance requires maintenance, modification or repair of the Common Elements shall be borne by the Association unless necessitated by the misuse, misconduct or neglect of a Lot Owner, or his family, visitors, guests, servants, lessees, agents or invitees, in which case such expense shall be assessed against such Owner.

**3.1.4 Certain Structure Types Prohibited.** Mobile, Modular and Manufactured Homes are prohibited. In the event of any question as to whether a proposed Structure may be considered a prohibited Mobile, Modular or Manufactured Home, the Board shall decide based on the standards for construction in the Policies and Procedures to be established by the Architectural Review Board.

**3.1.5 Rules and Regulations.** Rules and regulations adopted by the Board shall be binding upon the Owners, their families, visitors, guests, servants, lessees, agents, invitees, successors and assigns.

**3.1.6 Fences, Walls and Landscaping.** No fences or walls shall at any time be erected or maintained upon the Property or any Lot, unless they are specifically approved by the Architectural Review Board or its designated representative. Any landscaping, other than the original landscaping by Declarant, for each Lot or Residence Unit must be approved by the Architectural Review Board. Any annual

plants approved for landscaping by the Architectural Review Board must be cared for  
plants approved for landscaping by the Architectural Review Board must be cared for  
by the Owner of the Lot.

**3.1.7 Parking Areas.** No Owner of a Lot shall park, store or keep any motor vehicle, boat, trailer, recreational vehicle or other vehicle upon the Property except in accordance with rules and regulations adopted by the Association. No person shall repair or restore any motor vehicle, boat, trailer, recreational vehicle or other vehicle upon any portion of the Property or Common Elements except for emergency repairs thereto, and then only to the extent necessary to enable movement thereof to a proper facility.

**3.1.8 Waste Material Containers.** No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Lot or the Common Elements except in sanitary containers located in appropriate areas and otherwise in accordance with rules and regulations adopted by the Association from time to time. No "hazardous substance" or "solid waste" as defined in any state or Federal law shall be released, kept or maintained on any Lot or portion of the Common Elements.

**3.1.9 Signs.** Unless prior written approval is obtained from the Association, no sign shall be posted on the Common Elements, or on any Lot or in any Residence Unit which will be visible from the exterior of such Unit.

**3.1.10 Offensive Trade or Activity.** No noxious or offensive trade or activity shall be carried on upon any building site, nor shall anything be done thereon which may be or cause an embarrassment, discomfort, annoyance or nuisance to the neighborhood. No trade materials or inventories may be stored upon the premises and no campers, recreational vehicle, motor home, trucks or tractors, boats or boat trailers may be stored or regularly parked on the premises unless garaged and out of view, without prior written approval of Architectural Review Board. Unless approved in writing by the Architectural Review Board, no business activity or trade of any kind whatsoever, which shall include but not be limited to the use of any residence as a doctor's office or professional office of any kind, shall be carried on upon any building site.

**3.1.11 No Temporary Structures.** No Structure of temporary character, tent, shack, trailer, camper, garage, or any other outbuilding, except for temporary

Structures used by Declarant in the operation, maintenance or development of the Property shall be used on any Lot at any time as permanent or temporary residence, or dwelling, except under a temporary written permit which may be granted, upon specific time limitations of such use, in the discretion of the Architectural Review Board. Nor shall any of the facilities referenced above be placed on or erected on any Lot or Lots; provided, however, that the Architectural Review Board may grant permission for such temporary buildings or Structures for the storage for materials during construction by the persons doing such work.

**3.1.12 No Livestock.** No livestock of any description may be kept or permitted on the Property with the exception of dogs, cats, and other animals which are bona fide household pets, and which do not make objectionable noise or constitute a nuisance or inconvenience to Owners of other Lots or Residence Units nearby. All pets shall be leashed when not on the Owner's Lot, and shall otherwise be controlled by the Owner while on the Owner's Lot such that the pet shall not have unrestrained access to property other than that of the Owner. Upon receipt of a written complaint regarding any dog, cat or pet, the Architectural Review Board may notify the Owner of such dog, cat or pet of the complaint and, after affording the Owner an opportunity to be heard, impose such restrictions upon the Owner regarding such dog, cat or pet as may be reasonably necessary to satisfy said complaint in the discretion of the Board. No raising, breeding, training or commercial dealing in dogs, cats or any other animals may be permitted on or from any Lot.

**3.1.13 Off-Street Parking.** To the maximum extent reasonably practical, adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles owned by such Owner, or his guest. Owners of Lots agree not to park their automobiles or other vehicles on the streets in the development. No boats, trailers, or recreational vehicles shall be regularly parked or stored on any street, or on any Lot except in a garage. No commercial vehicles shall be parked on any street or Lot longer than is reasonably necessary for the driver thereof to perform the business functions to which the commercial vehicle relates.

**3.1.14 Recreational Facilities.** No Owner in the development shall have any right to use any portion of the Common Elements comprised of recreational facilities

unless the Owner has paid the applicable fees and assessments established by the Association.

**3.1.15 Refuse.** No Lot shall be used or maintained as a dumping ground for rubbish, refuse or garbage. Garbage or other waste shall be kept in sanitary containers. All incinerators or other equipment for the disposal or storage of such matter shall be kept in a clean and sanitary condition, and all incinerators shall be approved by the Architectural Review Board before installation or use. Burning of trash or refuse is prohibited without prior approval of the Architectural Review Board and the fire department authorized to serve the premises. Fires on any Lot or any portion of the Common Elements are prohibited unless approved by the Architectural Review Board. No hazardous substance, waste or other toxic material shall be dumped, buried, injected, treated or disposed of on any Lot or any portion of the Common Elements.

**3.1.17 Antennae and Satellite Dishes.** Subject to any applicable Federal, state, county or municipal statute, regulation, law, code or ordinance or other governmental requirement, Owners shall be permitted to erect a direct broadcast satellite dish fewer than thirty-nine inches in diameter, broadcast television antennas not more than twelve feet in height, and an antenna fewer than thirty-nine inches in diameter used to receive wireless cable (multichannel multipoint distribution) that is mounted on a mast not more than twelve feet in height. However, so long as such requirements do not substantially degrade reception by such devices, the Architectural Review Board may require that such devices be located in an area not visible from a street. The Architectural Review Board may further require that the owner surround the device with evergreen vegetation or architectural features such as fences, and the Architectural Review Board may require that such evergreen vegetation be of a species and size such that it will screen the devices from view within two (2) years. The owner will be responsible for the replacement of any such evergreen vegetation that dies so long as the device remains in place on the lot. The Architectural Review Board may also require that the owner paint such device in a dull earth-tone color and that no lettering or numerals shall be visible on the surface of such device.

**3.1.18 Wash.** All drying of wash must be done indoors or in an area screened from view from any other Lot, Residence Unit or street. No permanent exterior clothes dryer shall be erected, installed or maintained on any Lot or on any Structures thereon. Only collapsible or retractable clothes dryers shall be used and they shall be collapsed or retracted when not in use and shall be located in the rear yard behind any Residence Unit.

**3.1.19 Trees and Foliage.** Trees measuring four (4) inches or more in diameter, at a point three (3) feet above ground level, and any flowering trees or shrubs above five (5) feet in height may not be removed from a Lot or Limited Common Element without the written approval of the Architectural Review Board except (a) by Declarant on Lots owned thereby and on Limited Common Elements for the benefit of Lots owned thereby and (b) in cases of emergency when a tree that is potentially dangerous to persons or property may be removed upon approval of an executive officer of the Board.

**3.1.20 No Site Obstructions.** No trees or shrubs shall be located on any Lot which block the view of operators of motor vehicles so as to create a traffic hazard.

**3.1.21 Unsightly Conditions.** It is the responsibility of each Owner to prevent any unclean, unsightly or unkempt conditions of his Resident Unit or grounds on a Lot of any owner that shall tend to materially decrease the beauty of the Planned Community. The Association shall have the option, but not the obligation to ameliorate any such condition and charge such expense to the Owner as an additional assessment immediately due and payable collectible under the provisions of Article 7.

**3.1.22 Discharge of Firearms.** Hunting and trapping of wild animals, fowl and game and discharge of firearms and/or bows and arrows within the property is prohibited unless required for public or private safety.

**3.1.23 Motorized Vehicles.** All motorized vehicles operating within the Property must be properly muffled so as to eliminate noise which might be offensive to others.

**3.1.24 Additional Use Restrictions.** These Restrictions shall include architectural and landscaping restrictions which shall govern portions of the Property as provided in Article 4.

## ARTICLE 4

### CONSTRUCTION ON LOTS / RESIDENCE UNITS

#### ARCHITECTURAL AND LANDSCAPE CONTROLS

**4.1 Architectural Review Board.** It is the intent of Declarant and the Owners of Lots within the Original Project Area to create a general plan and uniform scheme of development of the Property and to create within the Property a residential community of high quality and harmonious improvements. The Declarant desires to provide for the preservation of the property values in the Planned Community with respect to any Residence Unit constructed on any Lot by the Declarant and to that end, desires to establish an Architectural Review Board in order to provide and maintain certain standards as to harmony of external design and location in relation to surrounding Structures and topography. Accordingly, the Architectural Review Board shall have the absolute and exclusive right to approve or disapprove all architectural, landscaping, exterior alterations or renovations, and locating of any proposed improvements other than those completed by the Declarant. The Architectural Review Board may, in its sole discretion, impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning or other governmental codes. The initial standards and procedures of the Architectural Review Board shall be adopted within one (1) year of the recordation of this Declaration.

**4.2 Approval to Build.** The Owner of a Lot may alter the Residence Unit constructed by Declarant thereon, subject to the following terms, conditions and restrictions:

**4.2.1 Lot Configuration.** The lay of the Lots as shown on any recorded plat shall be adhered to; provided, however, Declarant and its successors and assigns, may revise and altar, without the prior written approval of the Architectural Review Board, the following: (a) the configuration of Lots so that additional streets or access easements, either public or private, may be opened through any existing Lot, and (b) the size and shape of any Lot may be altered, provided that any standards prescribed in applicable building, zoning or other governmental codes are met.

**4.2.2 Applicable Laws and Architectural Review Board Policies.** A Lot is subject to having any improvements constructed on it by its Owner that (a) meets the requirements of any applicable laws, ordinances, restrictions and these covenants and (b) is approved by the Architectural Review Board pursuant to the Policies and Procedures to be established by the Architectural Review Board. The Architectural Review Board shall have the power to enforce this Article and the Policies and Procedures by any action, including any type of action in a court of law or equity.

**4.2.3 Plans and Specifications.** No building of any type, outside lighting, driveway, clearing or site work, outside trash receptacle, fence, wall, hedge or screen planting shall be erected, placed or altered on any premises, nor shall any exterior building addition to or change or alteration therein, including re-painting or re-staining the exterior of any Residence Unit be made within the Planned Community until the building plans, specifications and plot plans showing the location of such building, outside lighting, outside trash receptacle, wall, hedge, fence or screen planting have been approved in writing as to conformity and harmony of external design, and external materials with existing Structures in the area and as to location with respect to topography, wetlands, and finished ground elevation, by the Architectural Review Board. No exposed concrete blocks shall be used above finished ground elevations unless said blocks are covered with brick veneer, stone, or stucco. No asbestos shingles or asbestos siding of any type or asphaltic covering shall be used on vertical exterior walls, unless approved by the Architectural Review Board. In the event said board fails to approve or disapprove such design or location within forty-five (45) days after such plans and specifications have been submitted to it, such approval will not be required and this covenant will be deemed to have been fully complied with. All improvements constructed by the Declarant are exempt from this provision.

**4.2.4 Site Plans.** Except for improvements made by Declarant, the Architectural Review Board shall approve the location of buildings and other improvements on all building sites in the Planned Community.

**4.2.5 Square Footage of Residence Units.** In the event of destruction of a Residence Unit, any replacement residential Structure shall contain at least the same square footage as the destroyed Unit.

**4.2.6 Approvals.** The Architectural Review Board shall have the right to

**4.2.6 Approvals.** The Architectural Review Board shall have the right to disapprove any plans, specifications or details submitted to it as aforesaid in the event such plans, specifications and details are (a) not in accordance with all of the provisions established in this Declaration and the Policies and Procedures to be established by the Architectural Review Board, (b) if the design or color schemes of the proposed building or other Structure is not in harmony with the general surroundings of such Lot or with the adjacent buildings or Structures, (c) if the plans and specifications submitted are incomplete or (d) in the event the Architectural Review Board deems the plans, specifications or details, or any part thereof, to be contrary to the interests, welfare or rights of all or any part of the Property or the Owners thereof, all in the sole discretion of the Architectural Review Board. The decisions of the Architectural Review Board shall be final, subject to the right of the Owner to appeal to the Board. Neither Declarant nor the Board nor the Architectural Review Board nor any agent thereof shall be responsible in any way for (e) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing, (f) any structural or other defects in any work done according to such plans and specifications, or (g) the enforcement of any municipal or governmental code, statute, law or ordinance.

**4.3 Building Permit.** No Owner shall obtain a building permit from the applicable governmental agency without first obtaining all necessary approvals from the Architectural Review Board as set forth herein. The Architectural Review Board shall have the right to charge a reasonable building permit fee for use to defray the expense of the Architectural Review Board in approving any building or Lot construction plan which shall be payable by the Owner at the time of submission of the plans for approval.

**4.4 Time Period.** The work of constructing, altering or remodeling any building on any Lot or Lots shall be pursued diligently from the commencement until the completion thereof, and shall be completed within twelve (12) months from time of approval by the Architectural Review Board.

**4.5 Grading and Filling.** All changes to any Lot grading as completed by Declarant shall be approved in advance by the Architectural Review Board.

**ARTICLE 5**

**ARTICLE 5**

**PARTY WALLS**

**5.1 General Rules of Law to Apply.** To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage resulting from negligence or will acts or omissions shall apply to each party wall or party fence which is built as part of the original construction upon each Lot and any replacement thereof. In the event that any portion of any Structure as originally constructed by Declarant, including any party wall or fence, shall protrude over an adjoining Lot, such Structure, party wall, or fence shall be deemed to be a permitted encroachment upon the adjoining Lot, and the Owner shall neither maintain any action for the removal of a party wall or fence or projection, nor any action for damages. In the event that there is a protrusion described in the immediately preceding sentence, it shall be deemed that said Owner has granted a perpetual easement to the adjoining Owner for continuing maintenance and use of the projection, party wall or fence. The foregoing shall apply to any replacements in conformance with the original Structure, party wall or fence constructed by Declarant. The foregoing easements and conditions shall be perpetual in duration and shall not be subject to amendment in the manner as these Restrictions.

**5.2 Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who own such party wall in proportion to their ownership.

**5.3 Insurance; Destruction by Fire or Other Casualty.** Declarant and each Owner shall procure and maintain policies of insurance against fire and other casualty (including extended coverage endorsements and other requirements and endorsements as the Board shall, from time to time, reasonably require pursuant hereto) for each Residence Unit in an amount not less than one hundred percent (100%) of the maximum insurable value (predicated upon replacement value) thereof. Declarant and each Owner, as applicable, shall, upon the occurrence of a casualty, apply the full amount of the proceeds of the aforesaid policies of insurance to the repair, restoration or reconstruction, as necessary, of the Residence Unit; provided, however, that, if applicable governmental authorities prohibit the repair, restoration or

reconstruction, as necessary, of the Residence Unit, Declarant and each Owner, as reconstruction, as necessary, of the Residence Unit, Declarant and each Owner, as applicable, shall demolish the Residence Unit and shall remove any and all debris therefrom and shall seed in grass and maintain the Lot to a neat and orderly appearance so as to avoid diminution therefrom of proximate Lots and Residence Units. The aforesaid policies of insurance shall (a) be issued by an insurance company licensed to conduct business in the State of North Carolina and (b) provide that the Association shall receive written notice at least thirty (30) days prior to cancellation or reduction of the coverages afforded by the aforesaid policies of insurance. The Association shall, if Declarant or any Owner shall decline or otherwise fail to pay all applicable premiums the aforesaid policies of insurance, be entitled—but shall not be required—to pay all applicable premiums of the aforesaid policies of insurance. The payment of any applicable premiums by the Association shall create, for the benefit of the Association, an assessment secured by a lien in the same manner and to the same extent as set forth in Article 7 hereof.

**5.4 Destruction of Party Wall by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

**5.5 Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**5.6 Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**5.7 Easement and Right of Entry for Repair, Maintenance, and Reconstruction.** Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance or

reconstruction shall be done expeditiously, and, upon completion of the work, the reconstruction shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practical.

**5.8 Certification with Respect to Contribution.** If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article request of the adjoining Owner a certification that no right of contribution exists, whereupon it shall be the duty of the adjoining Owner to make such certification immediately upon request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor.

**5.9 Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all of such arbitrators shall be binding upon the Owners, who expressly agree to submit to and be bound by such arbitration procedure and decision. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors shall select an arbitrator for the refusing party. All arbitrators chosen shall either be architects, engineers, general contractors or attorneys licensed to practice in North Carolina.

## **ARTICLE 6**

### **PROPERTY OWNERS ASSOCIATION**

**6.1 Membership.** Every owner of a Lot shall be a member of Cotswold of Pinehurst Homeowners Association, Inc., a non-profit corporation, to be created by the Declarant. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each membership in the Association shall relate to and have a unity of interest with an individual Lot which may not be separated from ownership of said Lot.

**6.2 Powers of Association.** Subject to the provisions of this Declaration and the Articles of Incorporation, the Association may exercise all powers provided by

NCGS §47F-3-102 of the North Carolina Planned Community Act, as amended and NCGS §47F-3-102 of the North Carolina Planned Community Act, as amended and recodified from time to time, including but not limited to the following:

- 6.2.1** adopt and amend Bylaws and rules and regulations;
- 6.2.2** adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from owners;
- 6.2.3** hire and discharge managing agents and other employees, agents, and independent contractors;
- 6.2.4** institute, defend, or intervene in litigation or administrative proceedings on matters affecting the Planned Community;
- 6.2.5** make contracts and incur liabilities;
- 6.2.6** regulate the use, maintenance, repair, replacement, and modification of Common Elements;
- 6.2.7** cause additional improvements to be made as a part of the Common Elements;
- 6.2.8** acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to NCGS §47F-3-112;
- 6.2.9** grant easements, leases, licenses, and concessions through or over the Common Elements;
- 6.2.10** impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements other than the Limited Common Elements and for services provided to Owners;
- 6.2.11** impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer;
- 6.2.12** after notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the Association for reasonable periods

for violations of the Declaration, Bylaws, and Rules and Regulations of the Association;

**6.2.13** impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the Declaration, or statements of unpaid assessments;

**6.2.14** provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;

**6.2.15** assign its right to future income, including the right to receive Common Expense assessments;

**6.2.16** merge or consolidate with another planned community and/or similar association pursuant to NCGS §47F-2-121, specifically including, but not limited to merger or consolidation with The Cotswold Townhomes Association.

**6.2.17** exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and

**6.2.18** exercise any other powers necessary and proper for the governance and operation of the Association.

**6.3 Procedures for Fines and Suspension of Planned Community Privileges or Services.** A hearing shall be held before an adjudicatory panel appointed by the Board to determine if any Owner should be fined or if Planned Community privileges or services should be suspended. If the Board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the Board. The Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be assessments secured by liens under Article 7. If it is decided that a suspension of Planned Community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

**6.4 Executive Board Members and Officers.**

**6.4.1** Except as provided elsewhere in this Declaration, in the Bylaws, or in  
**6.4.1** Except as provided elsewhere in this Declaration, in the Bylaws, or in subsection 6.4.2, the executive board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the executive board shall be deemed to stand in a fiduciary relationship to the association and the lot owners and shall discharge their duties in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions.

**6.4.2** The executive board may not act on behalf of the Association to amend the Declaration, except for any amendments that do not require Member approval; to terminate the Planned Community; or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

**6.5** **Voting.** The voting rights of the membership shall be appurtenant to the ownership of the Lots. Each Owner shall be entitled to one (1) vote for each Lot owned. If only one of multiple owners of a Lot is present at a meeting of the Association, that Owner is entitled to cast the vote allocated to that Lot. If more than one (1) of the multiple owners are present, the vote allocated to that Lot may be cast only in accordance with the agreement of the majority in interest of the multiple owners. Majority agreement is conclusively presumed if any one of the multiple owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other multiple Owners of the Lot.

**6.6** **Proxies.** The vote allocated to a Lot may be cast pursuant to a proxy duly executed by a Lot Owner. If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of votes by the other owners of the Lot through a duly executed proxy. A Lot Owner may not revoke a proxy given pursuant to this section except by written notice of revocation delivered to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates one year after its date, unless it specifies a shorter term.

**6.7** **Amenities and Common Elements.** Every park, recreation area, recreation facility, dedicated access and other amenities appurtenant to the Planned

Community, whether or not shown and delineated on any recorded plat of the Community, whether or not shown and delineated on any recorded plat of the Property, shall be considered private and for the sole and exclusive use of the Owners of Lots within the Property. Neither Declarant's execution nor the recording of any plat nor any other act of Declarant with respect to such areas is, or is intended to be, or shall be construed as a dedication to the public of any such areas, facilities or amenities.

**6.8 Rules and Regulations.** The Association may make reasonable rules and regulations governing the use of the Property, including the Common Elements, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Copies of such rules and regulations shall be maintained by the Secretary of the Association and furnished to all Owners upon request. Such rules and regulations shall be binding upon the Owners, their families, visitors, guests, servants, lessees, agents, successors and assigns until and unless they are specifically amended, overruled or canceled in a regular or special meeting of the Association by the affirmative vote of seventy-five percent (75%) of the total vote of the membership of the Association.

**6.9 Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**6.10 Personal Property for Common Use.** The Association may from time to time acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

## **ARTICLE 7**

### **COMMON EXPENSES**

**7.1 Creation of the Lien and Personal Obligation of Assessments.** Each Owner for each Lot owned within the properties, 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: (a) annual assessments or charges and (b) special

assessments for capital improvements, such assessments to be established and assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on each Lot and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

**7.2 Common Expenses.** The Common Expenses of the Planned Community include:

**7.2.1** All amounts expended by the Association or the Architectural Review Board in enforcing the Declaration, the Bylaws, or the Architectural Policies and Procedures to be established by the Architectural Review Board.

**7.2.2** All amounts expended by the Association in carrying out any duty or discretion as may be required or allowed by the Declaration or the Bylaws.

**7.2.3** All amounts declared to be Common Expenses in the Declaration or Bylaws.

**7.2.4** All taxes and special assessments which may be levied from time to time by any governmental authority upon the Common Elements in the Planned Community.

**7.2.5** Fees and expenses of managing and administering the Association and maintaining, repair or placement of the Common Elements;

**7.2.6** Expenses of utility services for the Common Elements, including water, gas, electricity and sewer;

**7.2.7** The costs of all insurance premiums on all policies of insurance obtained by the Board pursuant to the Declaration;

**7.2.8** All rental and other payments required to be made for any property which is hereafter leased or rented for the use and benefit of the Association;

**7.2.9** Amounts determined by the Board to be reasonably required as working capital of the Association, for a general operation reserve, for a reserve fund for

replacements, for deficiencies arising from unpaid assessments, and such amounts as replacements, for deficiencies arising from unpaid assessments, and such amounts as may be required for the purchase or lease by the Board or its designee, corporate or otherwise, on behalf of all Owners of any Lot who has elected to sell or lease such Lot or Lot which is to be sold at a foreclosure or other judicial sale;

**7.2.10** Special assessments for capital improvements;

**7.2.11** Any ad valorem real property taxes and governmental special assessments affecting the Common Elements which are not assessed upon the Owners separately;

**7.2.12** Fees and expenses for the promotion of the health, safety and welfare of the residents of the Property;

**7.2.13** Maintenance and operation expenses for the streets, gatehouses, walking or jogging trails, any recreational facilities (including, but not limited to, the Recreational Common Elements and other similar recreational amenities), any future Community Center Building and Grounds, community garden, native plant nursery, playground, wetlands, parks and other properties owned, leased or used by the Association or for which the Association has maintenance responsibility.

**7.2.14** Costs and expenses that the Association incurs to arrange with third parties to furnish trash collection, snow removal, and other common services to each Lot;

**7.2.15** Costs and expenses for the acquisition, improvement, repair and maintenance of the properties, services and facilities owned, leased or acquired by the Association;

**7.2.16** Costs and expenses for the employment of third party managers for the Common Elements, accountants, attorneys and other professionals to represent the Association when necessary;

**7.2.17** Costs and expenses to purchase, install, maintain and replace, if damaged, at Association expense, all street directional and regulatory signs in the Original Project Area;

**7.2.18** Costs and expenses of maintenance and landscaping on the rights of ways of any public street or road abutting the Original Project Area, including

entranceways, identifying signs and any landscaping within the boundary of the entranceways, identifying signs and any landscaping within the boundary of the Original Project Area;

**7.2.19** Cost and expenses of maintenance of any reserved utility easements, including drainage easements, whether or not located within the Original Project Area, regardless of ownership;

**7.2.20** Costs and expenses for the procurement and maintenance of fidelity and performance bonds for its officers, agents and employees.

**7.2.21** All Security Expenses.

**7.2.22** All other amounts necessary to carry out the responsibilities of the Association under the terms of the Declaration or the Bylaws;

**7.2.23** Any valid charge against the Association or against the Common Elements as a whole;

**7.2.24** Expense agreed upon as Common Expense by the Association and lawfully assessed against Owners of Lots in accordance with the Declaration or Bylaws; and

**7.2.25** Any other expense declared a Common Expense by the provisions of the Declaration or the Bylaws.

**7.3 Special Assessments for Capital Improvements.** In addition to the assessments provided for above, the Association may levy special assessments for the purpose of paying, in whole or in part, the cost of construction of any new improvement or reconstruction or replacement of any existing improvement within the Common Elements, including the cost of any fixtures or personal property relating thereto; provided that such assessment shall have been approved by the vote of the holders of at least two-thirds of the total vote of the Association at a regular or special meeting duly called, written notice of which shall have been given in the manner specified in the Bylaws of the Association (hereinafter the "Special Assessment Vote"); further provided, however, that, for the purposes of this Article VII, (a) the New Development Area shall, notwithstanding the absence of recorded subdivision maps thereof or Identifying Numbers attributed thereto, be deemed to constitute fifty-four Lots (hereinafter, individually a "Constructive Lot" and, collectively, the "Constructive

Lots"), (b) Declarant shall be accorded—and shall be entitled to exercise for purposes of the Special Assessment Vote—one-tenth of one vote for each Constructive Lot owned thereby, based upon a pro rata division of the acreage of the New Development Area, with the aggregate number of votes accorded to Declarant to be rounded up to the nearest whole number, and (c) Declarant shall be liable for a special assessment equivalent to the special assessment (as assessed for each Lot) multiplied by one-tenth of the number of Constructive Lots owned, at the time of the Special Assessment Vote, by (i) Declarant, (ii) immediate family members of parties with a legal, beneficial or equitable interest in Declarant (except as a principal residence) and beneficiaries of trusts for the benefit thereof (except as a principal residence), and (iii) entities in which Declarant—or parties with a legal, beneficial or equitable interest in Declarant—owns a legal, beneficial or equitable interest. The due date of any special assessments shall be fixed in the resolution or resolutions authorizing such assessments. Special Assessments shall be assessed at a uniform rate as applied to Regimes.

**7.4 Emergency Special Assessments.** The Association may levy an emergency special assessment when, in the sole determination of the Board, there is potential danger of damage to persons or property; provided, however, that the portion thereof allocated to the Declarant shall be allocated thereto pursuant to Section 7.3. Such emergency special assessments may be utilized to pay for preventative, protective or remedial construction, reconstruction, improvements, repairs or replacements. Events justifying emergency special assessments include, but are not limited to, hurricanes, floods, and Emergency special assessments shall be collectible from Lot and Residence Unit Owners in such manner as the Board shall determine based on the nature of the emergency and the expense associated therewith.

**7.5 Certificates.** The Association shall, upon request by an Owner or prospective Owner or such person's agent, and for a reasonable charge not to exceed \$25.00, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**7.6 Procedure for Setting Annual and Special Assessments.** The Board of Directors shall annually adopt a proposed budget and the annual assessment for each Lot for the next year. Within 30 days after adoption of any proposed budget for the Association and assessments for the Lot Owners, the Board shall provide a summary of the budget and assessments to all Lot Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget and the assessments based thereon not less than 14 nor more than 30 days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget and the assessments based thereon are ratified unless at that meeting a majority of all Owners in person or by proxy rejects the budget. In the event the proposed budget is rejected, the periodic budget last in effect and the assessments based thereon shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors. In the event that the Association proposes a special assessment, it shall be set forth as a separate item in connection with the annual proposed budget and the procedure for setting the special assessment shall be as set forth above, except that the special assessment shall be ratified separately from the other portions of the budget.

**7.7 Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of up to eighteen percent (18%) per annum or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is greater, and shall constitute a lien on the Lot when a Notice or Claim of Lien upon recordation in the Office of the Clerk of Court of Moore County, by the Association setting forth the name of the Owner, the Identifying Number of the Lot, when the Assessment became due, the name of any subsequent Owner transferred the Lot since the Assessment became due, and the amount owed, exclusive of any collection expense. In addition to such interest charge, the delinquent owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Association to defray the cost of the late payment. The Association may bring an action at law against any Owner personally obligated to pay the same, and/or foreclose the lien against the property, and interest, late payment fee, fines, cost and reasonable attorneys' fees of

such action of foreclosure shall be added to the amount of such delinquent such action of foreclosure shall be added to the amount of such delinquent Assessment. Notwithstanding the foregoing, however, nothing herein contained shall be construed to obligate the Board to bring any legal action or to prosecute any such action to a final conclusion if it is determined by the Board that it would be in the best interest of the Association to forego, to delay or to discontinue any such legal proceeding. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

**7.7.1** The Association's lien may be foreclosed in like manner as a deed of trust on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina, as the same may be in effect at the time that foreclosure is commenced. Each Owner of a Lot agrees that the Association may appoint a Trustee or Commissioner (or the Clerk of Court may appoint such a person) for such purpose, and upon request by the Association, it shall be lawful for and the duty of the Trustee or Commissioner so appointed, to sell the Lot subject to the lien at public auction for cash, after having first given such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as may then be required by law and by giving such notice and advertising the time and place of such sale in such manner as may then be provided by law, and upon such and any resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey title to the purchaser in as full and ample manner as the Trustee or Commissioner is hereby empowered. The Trustee or Commissioner shall be authorized to retain an attorney to represent the Trustee or Commissioner in such proceedings.

**7.7.2** The proceeds of the Sale shall after the Trustee or Commissioner retains a commission, together with any reasonable attorneys fees incurred by the Trustee or Commissioner in such proceeding, be applied to the costs of sale, including, but not limited to, costs of collection, taxes, assessments, costs of recording, service fees and incidental expenditures, the amount due on the assessment which the lien secures and any advancements and other sums expended by the Association according to the provisions hereof and otherwise as required by the then existing law relating to foreclosures under power of sale. The Trustee's or Commissioner's commission shall

be five per cent (5%) of the gross proceeds of sale or the minimum sum of \$800.00, be five per cent (5%) of the gross proceeds of sale or the minimum sum of \$800.00, whichever is greater, for a completed foreclosure. In the event foreclosure of the lien is commenced, but not completed, the Lot Owner shall pay all expenses incurred by the Trustee or Commissioner, including reasonable attorneys fees, and a partial commission computed on five percent (5%) of the outstanding indebtedness or the above stated minimum sum, whichever is greater, in accordance with the following schedule, to wit: three-fourths ( $\frac{3}{4}$ ) after commencement but before the initial sale; and the greater of the full commission or minimum sum after the initial sale.

**7.7.3** Each Lot Owner and any Trustee or Commissioner appointed covenant and agree that in case the appointed Trustee or Commissioner, or any successor Trustee or Commissioner, shall die, become incapable of acting, renounce his trust, or for any reason the Association desires to replace said Trustee or Commissioner, then the Association may appoint, in writing, a trustee or commissioner to take the place of the Trustee or Commissioner; and upon the probate and registration of any initial or subsequent appointment of Trustee or Commissioner, the Trustee or Commissioner thus appointed shall be vested with or succeed to all rights, powers and duties of the Trustee or Commissioner herein described. Until such time as the Association may substitute such Trustee or Commissioner, the Trustee or Commissioner shall be the then current President of the United States of America.

**7.7.4** In the event the Trustee or Commissioner is named as a party to any civil action as Trustee or Commissioner to foreclose the Association's lien rights, the Trustee or Commissioner shall be entitled to employ an attorney at law, including the Trustee or Commissioner if a licensed attorney, to represent the Trustee or Commissioner in said action and the reasonable attorney's fee of the Trustee or Commissioner in such action shall be paid by the Association and added to the outstanding indebtedness which the Association's lien secures and bear interest at the rate provided by this Declaration for unpaid assessments.

**7.7.5** Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, or by request to join the Association, is deemed to bargain, sell, grant, give and convey to any such appointed Trustee or Commissioner for the benefit of the Association a real property interest in said Lot to

secure the Association's lien, TO HAVE AND TO HOLD said interest with all privileges secure the Association's lien, TO HAVE AND TO HOLL said interest with all privileges and appurtenances thereto belonging, to said Trustee or Commissioner, his heirs, successors and assigns forever, upon the trust, terms and conditions and for the uses herein set forth.

**7.8 Collection.** The Board shall take prompt action to collect the full amount of all fees, charges, assessments and other amounts, including any installment thereof, due from any owner which remain unpaid for more than ten (10) days from the respective due date for payment thereof. In the event of failure by any owner to pay within said ten (10) days any such amount, then the entire balance of all such amounts, including, without limitation, all amounts which would otherwise be payable in installments, may, at the option of the Treasurer of the Association, be accelerated and be declared immediately due and payable in full, without notice.

**7.9 Limitation on Assessments.** The maximum annual assessment may not be increased by more than the greater of (a) ten percent (10%) over the prior year assessment or (b) the aggregate increase, if any, as expressed in percentage terms, in the Consumer Price Index for the twelve (12)-month period ended December 31 precedent thereto. The term "Consumer Price Index" means the Consumer Price Index for Consumer Price Index, U.S. City Average, All Items, Seasonally Adjusted (Base Period 1982-84=100), from time to time published by the Bureau of Labor Statistics, United States Department of Labor for Charlotte, North Carolina, or if none is published for said city, then the metropolitan area closest to Charlotte, North Carolina and for which the Bureau of Labor Statistics does publish such information. In the event the Consumer Price Index shall be discontinued, the Bureau of Labor Statistics shall be requested to furnish a new index comparable to the Consumer Price Index, together with information which will make possible the conversion of the new index. If for any reason the Bureau of Labor Statistics does not furnish such index and information, the parties hereto shall thereafter accept and use such other index or comparable statistics regarding the cost of living for Charlotte, North Carolina, or the closest metropolitan area for which the Bureau of Labor Statistics does publish such information, as the case may be, which shall be computed and published by an agency of the United States or by a responsible financial periodical or recognized authority

then to be selected by the parties. The limitations recited herein shall not in any manner restrict, limit, modify or amend the amount of any annual or special assessments that may be approved as part of the annual budget process.

**7.10 Rate of Annual Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots within the same Regime and may be collected on a monthly, quarterly or yearly basis or such other periodic basis as the Board may set. Emergency special assessments shall be collectible from Lot and Residence Unit Owners in such manner as the Board shall determine.

**7.11 Date and Commencement of Annual Assessment.** The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of that Lot by Declarant to an Owner; provided, however, that, in the event of the sale of a Lot by Declarant (a) prior to the erection of a Residence Unit thereupon and (b) to a general contractor licensed in North Carolina for the erection of a Residence Unit thereupon, the annual assessments provided for herein shall commence as to such Lot on the sooner to occur of (y) the issuance of a certificate of occupancy or equivalent instrument by the applicable governmental authorities or (z) the first day of the month following the elapse of twelve (12) months from the date of the sale of such Lot. The first annual assessment shall be adjusted according to the number of whole months remaining in the calendar year and shall be paid at closing along with an additional two (2) months assessment to be used as an initial reserve.

**7.12 Subordination of the Lien to Mortgages.**

**7.12.1** The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust if, but only if, all such assessments with respect to such Lot having a due date on or prior to the date such mortgage or deed of trust is filed of record have been paid. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding sections. 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 filed prior to the time of transfer.

**7.12.2** Such subordination is merely a subordination and shall not relieve the  
**7.12.2** Such subordination is merely a subordination and shall not relieve the  
Owner of the mortgaged or pledged property of his personal obligation to pay all  
assessments coming due at a time when he is the Owner.

**7.13 Exempt Property.**

**7.13.1** Each Lot which is subject to this Declaration shall be exempt from the  
assessment, charges and liens created herein while owned by Declarant.

**7.13.2** All Common Elements, including any Lot which may be designated for  
use as such by Declarant, shall be exempt from the assessments, charges and liens  
created herein.

**7.13.3** The grantee in conveyances made to utility companies for wells, tanks,  
pipelines, treatment plants and dispersion fields, liens, pumping stations and  
maintenance facilities or for the purpose of creating any utility easement.

**7.13.4** All properties exempted from taxation by the laws of the State of North  
Carolina upon the terms and to the extent of such legal exemptions (Homestead  
exemptions shall not be considered an exemption).

**7.14 Payment by Declarant.** During the period during which (a) the  
Declarant Development Rights are enforceable pursuant to the terms of this  
Declaration and (b) the Declarant is not prohibited—de jure or de facto—from receipt  
of building permits from applicable governmental authorities for structures  
consistent—in conformity with and harmony of external design and materials—with  
extant adjacent Residential Units, in lieu of the payment of any annual assessments,  
Declarant shall be responsible only for the payment of a single annual fee to the  
Association, in an amount equivalent to one hundred dollars (\$100.00) for each Lot or  
Constructive Lot owned, as of January 1 of each successive year in 2005 and  
thereafter, by (i) Declarant, (ii) immediate family members of parties with a legal,  
beneficial or equitable interest in Declarant (except as a principal residence) and  
beneficiaries of trusts for the benefit thereof (except as a principal residence), and (iii)  
entities in which Declarant—or parties with a legal, beneficial or equitable interest in  
Declarant—owns a legal, beneficial or equitable interest based upon a pro rata division  
of the acreage of the New Development Area (hereinafter the "Declarant Budget Fee");

provided, however, that the Declarant Budget Fee shall be payable (a) fifty percent on or before January 5 of each successive year and (b) fifty percent on or before July 5 of each successive year; further provided, however, that the Declarant Budget Fee shall increase on an annual basis in 2006 and thereafter by a percentage equivalent to the annual increase, if any, in the annual assessments paid by the Owners.

## **ARTICLE 8**

### **COMMON ELEMENTS**

**8.1 Common Elements.** It is the intention of Declarant that essentially all of the Original Project Area other than the Lots will be conveyed to the Association and be Common Elements, which includes, but is not limited to, the Recreational Common Elements, the private streets and parking areas, entranceways, water wells, and other areas shown on any current or future recorded plat other than Lots. For purposes of maintenance and assessments, the Common Elements also consist of any security gatehouses, vehicles, equipment, streets and street rights-of-way, roadsides, shoulders, landscape berms, drainage areas, landscaping, boundary fencing, signs at the entrances and along said roadways, any recreational site(s) and facilities, maintenance building(s) and equipment, storm sewers, drainage, walking and jogging trails and gas line easements, which have been constructed or improved by the Declarant but not be within the New Development Property.

### **8.2 Easements Affecting Common Elements.**

**8.2.1** Subject to the Declarant Development Rights, the Members have an easement (a) in the Common Elements for purposes of access to their Lots and (b) to use the Common Elements and all real estate which may become Common Elements for all other purposes, except as otherwise provided in the Declaration.

**8.2.2** The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Declarant Development Rights reserved in the Declaration.

**8.2.3** Every Owner shall have a right and easement of enjoyment in and to the Common Elements owned by the Association, or for which the Association has

maintenance responsibility, which shall be appurtenant to and shall pass with the maintenance responsibility, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

**8.2.3.1** The right of the Association to suspend the voting rights and right to use recreational facilities that are Common Elements by an Owner (and the occupants of such Owner's Residence Unit) for any period during which any assessment against said Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for an infraction by an Owner or by any occupant of such Owner's Residence Unit of the Association's rules and regulations;

**8.2.3.2** The right of the Association to dedicate or transfer, or to grant an easement in or to all or any part of the Common Elements to Declarant, any public or private agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association and the grantee expressed in an instrument agreeing to such dedication, transfer or grant, signed by the Association and placed upon the records of the Register of Deeds of Moore County;

**8.2.3.3** The right of the Association to provide for the exclusive use by an Owner (or any occupant of an Owner's Residence Unit) of certain portions of the Common Elements at certain designated times and for such functions as may be from time to time permitted under said rules and regulations and the right of the Association to charge a fee for such exclusive use.

**8.2.3.4** The right of the Declarant, in its sole discretion, and at no cost to any Owner, to grade, pave or otherwise improve any street shown on any recorded plat of the property.

**8.2.3.5** The right of the Association to charge reasonable admissions and other fees for the use of any recreational facility situated in the Common Elements.

**8.2.3.6** The right of the Association, in accordance with the Declaration and Bylaws, to borrow money for the purpose of improving the Common Elements and in aid thereof to mortgage said property, and the rights of such mortgage in said properties shall be subordinate to the rights of the homeowners hereunder.

**8.2.3.7** The right of the Declarant to develop the Planned Community and to sell or lease Lots or Residence Units to purchasers or lessees. As a material condition for

ownership of a Lot, each Owner releases Declarant from any claim that the Owner might have for interference with his quiet enjoyment of the Common Elements due to the development of the Planned Community, whether or not the construction operations are performed on the Common Elements or any Lots owned by Declarant, and each Owner acknowledges and agrees that Declarant shall have the sole right to design, construction, development and improvement of the Property.

**8.2.3.8** The right of the Declarant for so long as Declarant owns or has any use rights to any property subject to this Declaration, to transact any business necessary to consummate sales of the property throughout The Planned Community, including, but not limited to, the right to maintain sales office(s) within the Development Area, or on the Common Elements in location(s) to be selected by Declarant, to have employees in such offices, to construct and maintain other Structures or appurtenances which are necessary or desirable for the development and sale of the Property throughout The Planned Community including without limitation, sales models and parking areas; to post and display a sign or signs on any Lots or Residence Units owned by Declarant or the Property; and to use the Common Elements and to show Lots and Residence Units. Sales office signs and all other Structures and appurtenances pertaining to the sale or development of property within The Planned Community shall not be considered Common Elements and shall remain the property of the Declarant. Further, Declarant may authorize other builder/developer(s) to exercise the rights reserved in this Section, singularly or in concert with Declarant.

**8.3 Usage Rights.** The Common Elements shall be used only for the purposes for which they are intended in providing services and facilities for the common use and enjoyment of the Lot owners and occupants of the Residence Units. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by an Owner without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Elements by an Owner, except upon the prior written consent of the Association.

**8.4 Area Boundaries and Conveyance of Common Elements.** Each Lot or  
**8.4 Area Boundaries and Conveyance of Common Elements.** Each Lot or  
Lot shall have the boundaries set forth in the plats filed in the Moore County Registry of Deeds by Declarant as each phase is developed and on subsequent plats of additional property made subject to this Declaration. The Common Elements, as defined herein, when owned by the Association, shall remain undivided, and no right shall exist to partition or divide said Common Elements except as provided herein. The Common Elements are intended for the use and enjoyment of the Lot and Residence Unit owners and their guest and invitees. Title to the Common Elements shall be transferred by special warranty deed to the Association as soon as the transfer thereof is permitted by applicable governmental authorities for each of the aforesaid plats. Such conveyance shall be free and clear of all encumbrances and liens other than this Declaration, and the terms and conditions recited herein and any reserved easements necessary for the beneficial use of any of Declarant's remaining property that is not then a part of the Property.

**8.5 Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, and subject to the terms and conditions recited herein, his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside in his Residence Unit.

**ARTICLE 9**

**ARTICLE 9**

**FINANCING PROVISIONS**

**9.1 Approval of Owners and Holders of First Deeds of Trust.** Unless at least seventy-five (75%) percent of the owners and holder of first deeds of trust on Lots located within the Property have given their prior written approval, the Association shall not:

**9.1.1** 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. The granting of easements for utilities or other purposes or the conveyance of such systems to governmental bodies shall not be deemed a transfer within the meaning of this clause.

**9.1.2** Change the method of determining the obligations, assessments, dues or other charges which may be levied against an owner.

**9.1.3** By act or omission change, waiver, or abandon any plan of regulation, or enforcement thereof pertaining to the architectural design or the exterior appearance of residences located on Lots, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the Planned Community.

**9.1.4** Fail to maintain liability insurance coverage on the Common Elements.

**ARTICLE 10**

**SEWAGE DISPOSAL AND WATER SYSTEM**

**10.1 Charges.** Lot Owners agree to pay any availability, connection or surcharge fee for water or sewer, which may be approved by the North Carolina Utilities Commission prior to connection to such system. All usage charges of any nature for the utilities shall be paid by the Owner.

**10.2 Private Water Wells.** If the Declarant during the period during which the Declarant Development Rights are enforceable pursuant to the terms of this Declaration and thereafter by the Architectural Review Board determine, in their sole discretion, that additional private water wells may be constructed and drilled, said

private water wells may be constructed or drilled only with the prior written consent of private water wells may be constructed or drilled only with the prior written consent of and pursuant to the specific policies, terms and restrictions established by the Architectural Review Board; and water therefrom may be used only for irrigation and / or heating and cooling purposes, and temporary potable use subject to the approval of local statutory regulations.

## ARTICLE 11

### RESERVED EASEMENTS

**11.1 Utility and Drainage Easements.** Declarant and its successors and assigns reserve the right to construct and maintain utilities on the streets and roads of the Property either above or below ground and to make all necessary slopes for cuts or fills upon the Lots as needed as determined by the Declarant. Declarant reserves perpetual utility easements under, over and across that portion of any Lot outside the perimeter walls of the Residence Unit for the purpose of placing, laying, erecting, constructing, maintaining and operating, or of authorizing the placement, laying, erection, construction, maintenance and operation of utilities (including, without limitation, sewage, water (including irrigation), storm drainage, culverts, sprinkler lines, natural gas lines, TV wires, irrigation lines, security wires, street lights, electricity, gas, cablevision, telephone and telegraph). Within these easement areas, no Structure, planting or other material (other than sod) which may interfere with the installation and maintenance of underground utility facilities (all utility lines including, but not limited to, electric power lines shall be placed underground) shall be placed or permitted to remain unless such Structure, planting or other material was installed by the Declarant. The Association, its successors and assigns, are hereby granted access to all easements within where such underground facilities are located for the purpose of operation, maintenance and replacement thereof.

**11.2 No Interest in Utilities.** The interest conveyed by Declarant to any of said Lots by contract, deed or other conveyance, shall not in any event be held or construed to include the title to the water, gas, cablevision, sewer, storm sewer, electric light, power, telegraph and telephone lines, poles or conduits, or any other utility or appurtenances thereto constructed by Declarant, its agents, or by any utility

company along or upon said Lots, or any part thereof, to serve said property. The company along or upon said Lots, or any part thereof, to serve said property. The right to sell, convey or lease water, sewer and other utility lines and their appurtenances erected by or on behalf of Declarant is hereby expressly reserved to Declarant.

**11.3 Easement for Use of Streets.** Declarant hereby grants, conveys and assigns and sets over to every Owner, his family, tenants or bona fide guests the non-exclusive right of ingress, egress and regress over, upon and across the private streets within the Property and they shall have the use of said streets for access to and from public highways adjoining the properties. The Association reserves the right at any time hereafter to dedicate and convey such streets to any appropriate governmental body.

**11.4 Inspection and Maintenance.** Any Member of the Board, or any other person authorized by the Board, shall have an access easement to all Common Elements for the purpose of inspection, maintenance, repair or replacement of any part of the Property.

**11.5 Encroachment Easements.** To the extent that a Limited Common Element may lie outside the boundaries of a Lot to which it is allocated, there is hereby granted and reserved a perpetual easement of encroachment, including the right to maintain, repair and restore the Limited Common Element for the benefit of the Lot to which it is allocated.

**ARTICLE 12**

**ARTICLE 12**

**TRAFFIC REGULATIONS**

**12.1 Traffic.** The Association shall have the right and power and option to establish and enforce rules and regulations governing the operation of vehicles and conveyances, motor powered or otherwise, on the private streets within the Original Project Area. Such rule and regulation making power and option shall include, but is in no way limited to, the establishment and enforcement of speed limits, stop signs, yield signs, no parking zones, traffic control signals, safety zones and other traffic control and safety devices, rules and regulations together with reasonable remedies, including fines for violations of such rules or regulations and the removal of offending vehicles from the Planned Community. A copy of all Traffic Regulations established hereunder and any amendments hereto shall be made available to all Members at the office of the Association.

**ARTICLE 13**

**VARIANCES**

**13.1 Variances.** The Architectural Review Board shall have power to and may allow reasonable variances and adjustments of these covenants, conditions and restrictions in order to overcome practical difficulties and to prevent unnecessary hardships in the application of the regulations contained herein; provided, however, that such is done in conformity to the intent and purposes hereof; and, provided, also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements located in the Property. Variances and adjustments may include, but not be limited to, height, size and setback requirements hereunder pursuant to the Policies and Procedures to be established by the Architectural Review Board. To be effective, a variance must be recorded and indexed under the name of the Association and the Owner.

**ARTICLE 14**

**ARTICLE 14**

**INSURANCE AND CASUALTY LOSSES**

**14.1 Insurance.** The Board or its duly authorized agent shall have the authority to and shall obtain and maintain in effect insurance for all of the improvements which are a part of the Common Elements against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full replacement cost (subject to such "deductibles" as the Board may determine) of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain and maintain in effect casualty and public liability insurance covering all Common Elements, such workmen's compensation insurance as may be required by law, all insurance which it may be required or authorized to obtain according to any amendment to this Declaration (all of which insurance shall be in accordance with the provisions of this Declaration), and such other insurance as the Board may from time to time deem appropriate and fidelity bond coverage as specified in FNMA Lending Guides, Chapter 3, Part 5, Insurance Requirements, as amended from time to time. Premiums for all such insurance shall be an expense of the Association.

**14.2 Policies.** All policies shall be written with a company holding an A.M. Best Financing Strength Rating of "A" or better. All policies shall be for the benefit of the Association and its mortgagees as their interests may appear. The original of all policies and endorsements thereto shall be deposited with the Board. The exclusive authority to adjust losses under policies maintained by the Board shall be vested in the Board or its duly authorized agent; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners or their mortgagees. Provision shall be made for the issuance of a certificate of insurance to each Owner and his mortgagee, if any, which shall specify the proportionate amount of such insurance attributable to the particular Owner's Lot. The Board shall conduct an annual insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all improvements on

the Common Elements by one or more qualified persons, at least one of whom should be a qualified building cost estimator. It shall be the individual responsibility of each Owner, at his own expense, to provide, as he sees fit, title insurance, homeowner's liability insurance, fire, casualty, theft and other insurance covering improvements, betterments and personal property damage and loss on his individual Lot and Residence Unit. The Board or its duly authorized agent shall be required to make every effort to secure insurance policies that will provide for the following: (i) a waiver of subrogation by the insurer as to any claims against the Board of Directors, its duly authorized agent, the Owners, and their respective tenants, servants, agents and guests; (ii) a waiver by the insurer of its right to repair or reconstruct instead of paying cash; (iii) that the policies cannot be canceled, invalidated or suspended on account of any one or more individual Owners; (iv) that the policies cannot be canceled, invalidated or suspended on account of the conduct of any director, officer or employee of the Association, or its duly authorized agent, without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its agent or any Owner; (v) that any "other insurance" clause in the master policy exclude individual Owner's policies from consideration.

**14.3 Use of Proceeds.** If the damage is confined to the Common Elements, such insurance proceeds shall be used by the Association to defray the cost of such repairs. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be retained by the Association or its duly authorized agent and placed in the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Elements. If the cost of such repairs exceeds the amount of such insurance proceeds, such excess may be provided either by means of a special assessment levied by the Board against all Owners in proportion to each Owner's share in the Common Elements or by means of an appropriation from the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Elements as the Board, in the exercise of its sole discretion, may determine.

**ARTICLE 15**

**ARTICLE 15**

**MAINTENANCE / REPAIR**

**15.1 Exterior Maintenance.** Each Owner, at his own expense, shall keep all of his Lot and Residence Unit and all exterior walls, roofs, equipment and fixtures therein, Owner-installed landscaping (except for the maintenance of grass, which shall be maintained at the expense of the Association), water, storm drainage, sanitary sewer and other utility lines serving only his Residence Unit in good order, condition and repair and in a clean and sanitary condition, and shall be responsible for all redecorating and painting necessary to preserve or maintain the good condition and appearance of the Residence Unit, any Limited Common Elements, the patios, terraces, balconies, floor surfaces of decks, balconies, patios or verandas and storage facilities, if any, and all other improvements and Owner landscaping located on the Lot and allocated as a Limited Common Element. No Owner may paint or stain any portion of the exterior of a Residence Unit a different color than its original color without the prior written consent of the Architectural Review Board, which approval may be withheld in the sole discretion of that Board. Each Owner shall also be responsible for all damages to any Residence Unit or any of the Common Elements, which may result from the neglect, negligence, misuse or misconduct of such Owner, Members of his family, his or their guests, employees, agents, invitees or tenants, and the cost of repair of any such damage shall be charged to such Owner and shall be due and payable as provided in Article 7 hereof. Each Owner and Declarant shall, at his own expense, shall, to the maximum extent practicable, keep all of its Lot and Residence Unit in a neat and orderly appearance during the course of construction, renovation or alterations.

**15.2 Optional Maintenance by Association.** In the event that an Owner of any Lot shall fail to maintain the premises and the improvements situated thereon in a manner reasonably satisfactory to the Board, the Board shall give written notice to such Owner, and, if said notice is not complied with within twenty (20) days, then the Association, after approval by two-thirds (b) of the Board, shall have the right, through its agents, contractors and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of any Residence Unit in a reasonable and good

and workmanlike manner. The cost of such repair, maintenance or restoration shall immediately be deemed a special assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and be enforceable as provided in Article 7.

**15.3 Required Maintenance by Association.** In addition to maintenance of the Common Elements, the Association shall also provide limited exterior maintenance by cleaning gutters and landscape maintenance within all Lots, except for Owner installed landscaping. The Owner shall be responsible for the maintenance of the remainder of the exterior of the Residence Unit and any Limited Common Elements as provided above, provided that the Association shall determine the frequency of need to repair, replace or maintain all other exterior improvements, including but not limited to roofs, driveways, re-staining or re-painting doors, garage doors and other similar features to maintain architectural consistency and should the Owner not promptly repair, maintain, or replace as requested, then the Association has the right, but not the obligation to do so. The cost of such repair, maintenance or restoration shall immediately be deemed a special assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and be enforceable as provided in Article 7.

**15.4 Easement Granted to Association.** In order to enable the Association to perform its obligations, there is hereby granted to the Association the right to unobstructed access over and upon each Lot at all reasonable times for the purposes set forth herein.

## **ARTICLE 16**

### **CONDEMNATION**

**16.1 General.** Whenever all or any part of the Common Elements of the Property shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association.

**16.2 Common Elements.** If the taking includes any part of the Common  
**16.2 Common Elements.** If the taking includes any part of the Common  
Elements on which improvements shall have been constructed (other than those  
contained within any Residence Unit) and if at least ninety percent (90%) of the total  
vote of the Association shall decide within sixty (60) days after such taking to replace  
said improvements, or any part thereof, on the remaining land included in the  
Common Elements and according to plans therefor first approved by the Association,  
then the Board shall arrange for such replacement. Alternatively, the Association  
shall treat the funds as a surplus.

## **ARTICLE 17**

### **NOTICES**

**17.1 Form of Notice.** Any notice required by the Act or by any of the  
documents shall be a written notice delivered to the recipient or mailed to him by  
United States mail, postage prepaid, at his last known address if the recipient is an  
individual, or addressed to the President of the Association, if the recipient is the  
Association or the Board. All notices delivered by mail shall be deemed to have been  
given as of the date and hour of the postmark thereon, or in the absence of such  
postmark, as of the date and time of mailing. The address of a Lot Owner reflected on  
either the Moore County Tax Department records or the records maintained by the  
Secretary of the Association shall be the address of each Owner for making of all  
notices required from the Board or the Association, and it shall be the responsibility of  
each Owner to furnish the Secretary written notice of any error in such records or  
change of address.

**17.2 Agent to Receive Service of Process.** All notices, stipulations, writings  
or processes to be served upon the Association, or upon the Board shall be delivered  
to the Registered Agent of the Association or to the then acting President of the  
Association.

**ARTICLE 18**

**ARTICLE 18**

**TERM**

**18.1 Term.** These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2014, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of a Majority of the then Owners of the Lots covered by these or substantially identical covenants, it is agreed to change said covenants in whole or in part.

**18.2 Covenants Running with Land.** The provisions of this Declaration and related documents shall constitute covenants running with the land, binding on the undersigned, its successors and assigns, and on all subsequent Owners of any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees, lessees, subleases and assigns. By the acceptance of any deed or other document conveying or transferring any interest in a Lot, the recipient thereof accepts and ratifies all covenants and restrictions contained herein and in the other documents. Each Lot Owner, by the acceptance of said deed or other document, covenants and agrees each with the other that he will join in the execution of any and all documents which are deemed necessary by the Board to renew or extend said covenants and restrictions from time to time and that any provision of law removing any limitation of time which would apply to this Declaration, if this Declaration were made after such provision of law becomes of effect, shall be deemed automatically to apply to this Declaration retroactively.

**ARTICLE 19**

**ARTICLE 19**

**ASSIGNMENT / AMENDMENT**

**19.1 Assignment.** Any or all of the rights, powers and obligations, easements and estates reserved by or granted to the Declarant or the Association may be assigned by the Declarant or the Association as the case may be. Any such assignment or transfer shall be made by the appropriate instrument in writing in which the assignee or transferee shall join for the purpose of evidencing its consent to such assignment and its acceptance of the rights and powers, duties and obligations herein contained. Such assignee or transferee shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to the Declarant and/or the Association. After such assignment, Declarant and/or Association shall be relieved and released of all obligations with respect to such rights, powers, obligations, easements or estates.

**19.2 Amendments by Declarant.** After the first conveyance of a Lot by Declarant, Declarant shall retain the right to make, without consent of the Owners, any amendment reasonably necessary and narrowly tailored to effectuate the exercise of any Declarant Development Right identified herein. Further, after the first conveyance of a Lot by Declarant, Declarant and Association—or either of them—shall retain the right to make, without consent of the Owners, any amendment (a) to correct any obvious error or inconsistency in drafting, typing or reproduction or (b) to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government, the State of North Carolina, the County of Moore regarding purchase or sale in such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare.

The Declarant may also amend the Declaration for other purposes with the consent of a Majority of Effected Lot Owners (as hereinafter defined) so long as (c) it is the record owner of (or holds a purchase money deed of trust on) twenty-five per cent (25%) of the total Lots in the Property based on the then current number of recorded Lots and (d) the Declarant secures the prior written consent of (i) all of the Owners of the Lot or Lots to be changed and (ii) a Majority of the Owners of the Lots to both sides within one hundred (100) feet of any involved Lot as well as the Lots across the street within one hundred (100) feet of the center of any involved Lots projected directly across the street.

Any amendments made pursuant to this section shall not affect the residential character of the Planned Community or the common plan or scheme for residential development. Any and all such amendments shall be recorded in the office of the Register of Deeds, and upon recording the same shall become effective with respect to the matter to which such amendment pertains. Other amendments which do not affect materially any rights of any then Owners or his mortgagee or any amendment necessary to effect compliance with any other law may be made by Declarant by recording the same in the foregoing manner at any time prior to the earlier of (e) the date on which Declarant certifies to the Association that all of the Lots have been conveyed to respective purchasers and (f) January 1, 2014. In the event that any such amendment does affect materially any rights of any then Owner or his mortgagee, such amendment shall be valid only upon the written consent thereto of all of the affected mortgagees and a Majority of the Effected Owners. Any such amendment shall be attached to an affidavit certifying that the amendment was duly adopted, which affidavit shall be executed by the Declarant and the Association as authorized by law in recordable form, and shall be effective when recorded together with the aforesaid affidavit in the office of the Register of Deeds.

**19.3 Amendments by Residence Unit or Lot Owners.** At any time, this Declaration, except for Section 19.2, which shall not be subject to amendment until the termination of the Declarant Protection Period, shall be amended by Residence Unit or Lot Owners in the following manner:

**19.3.1 Proposed Amendments.** The Board or any Member of the Association

**19.3.1 Proposed Amendments.** The Board or any Member of the Association may propose an amendment to this Declaration. Such proposed amendment must be submitted in writing to the Secretary of the Association at least twenty (20) days prior to the date of the special or regular Association meeting at which the proposal is to be considered.

**19.3.2 Notice.** A statement of the subject matter of the proposed amendment or amendments shall be included in the notice of any Association meeting at which the proposed amendments are to be considered.

**19.3.3 Resolution.** A resolution for the adoption of a proposed amendment may be proposed by any Member of the Association, including any officer of the Board. The resolution for adoption must be approved by the Members entitled to cast not less than sixty-six and two-thirds percent (66⅔%) of the total authorized vote of the Association; provided, however, that any proposed amendment which would increase or decrease the percentage vote required to effect any action by the Association must be approved by Members having, in the aggregate, the larger of such percentage vote as theretofore required or as would thereafter be required if such amendment were approved.

**19.3.4 Absentee Vote.** Members not present at any meeting may vote by proxy or by written vote as provided in the Bylaws.

**19.3.5 Proviso.** Notwithstanding any other provision hereof, no amendment shall change the boundaries of a Lot nor the share in the Common Elements appurtenant to it unless the record Owners of all Lots shall approve the amendment in writing.

**19.3.6 Execution and Recording.** A copy of each amendment adopted pursuant to this Article 19.3 shall be supported by an affidavit, which affidavit shall be executed by the officers of the Association authorized by law and the bylaws in recordable form, certifying that the amendment was duly adopted. The amendment shall be effective when such Amendment together with the Affidavit are filed for record in the Office of Register of Deeds.

**ARTICLE 20**

**ARTICLE 20**

**ENFORCEMENT**

**20.1 Violation of Covenants.** If the parties hereto or the Owners, or any subsequent third parties, or their heirs, successors or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property herein described or situated in the Planned Community and which is subject to these or substantially identical covenants to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant to prevent it, her, him or them from so doing and/or to recover damages or other expenses arising from said violation. In addition, the Association and, to the limited extent provided in Article 4.2.2, the Architectural Review Board shall have the authority, at their sole option and discretion, to enforce the terms, conditions and covenants recited herein; provided, however, neither the Board nor the Architectural Review Board have the specific obligation to enforce any covenants herein, and neither shall be liable for any failure to enforce said terms, covenants and conditions.

**20.2 Invalidity.** Invalidation of any one of these covenants or any part thereof by judgment or court order in no way affects any of the other provisions which shall remain in full force and effect.

**20.3 Laws and Ordinances.** These covenants shall be in addition to any laws, ordinances, governmental zoning or regulations which may be applicable to the Property herein described, and in the event such laws, regulations or ordinances may be more restrictive than these covenants, said laws, regulations or ordinances shall control.

**ARTICLE 21**

**REMEDIES FOR VIOLATIONS**

**21.1 Notice Period.** All provisions, restrictions, conditions, easements, covenants, agreements, liens and charges herein shall be binding on all of the Lots within the Property and the Owners thereof, regardless of the source of title of such

Owners, and any breach thereof if continued for a period of thirty (30) days—or five (5) Owners, and any breach thereof if continued for a period of thirty (30) days—or five (5) days in the event of an emergency situation that, in the judgment of the Board, is an imminent threat to person or property—from and after the date that Declarant, the Association, or any other Owners shall have notified in writing the Owner or resident in possession of the Lot upon which or as to which such breach has been committed to refrain from a continuance of such action and to correct such breach, shall warrant the Declarant, the Association or other Lot Owner, to apply to any court of law or equity having jurisdiction thereof for any injunction or other property relief, and if such relief be granted, the court may, in its discretion, award to the plaintiff in such action reasonable expense in prosecuting such suit, including reasonable attorney's fees.

**21.2 Other Liens.** Violations of any of the foregoing provisions, restrictions, conditions, easements, covenants, agreements, liens and charges shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any Lot or portion thereof in the Property but such provisions, restrictions, conditions, easements, covenants, agreements, liens, and charges shall be enforceable against any portion thereof acquired by any person through foreclosure or by deed in lieu of foreclosure for any violation of the provisions, restrictions, conditions, easements, covenants, agreements, liens and charges herein contained occurring after the acquisition of said property through foreclosure, or deed in lieu of foreclosure.

## **ARTICLE 22**

### **DECLARANT EXEMPTIONS**

**22.1 Declarant Exemptions.** Except as set forth herein in express terms, and notwithstanding any other language or provision to the contrary in any schedules or attachments to this Declaration, the Declarant shall be exempt from the covenants, restrictions and provisions contained in herein, so long as the Declarant owns one (1) or more Lots. This exemption is granted for the purpose of allowing Declarant to complete improvements and complete the sale (or lease with option to purchase) of all Lots without restriction. Neither the Owner, the Association nor any use of the Property shall interfere with completion of construction of the buildings, the Residence

Units or other improvements, or with the sale of the Lots by Declarant. Declarant may Units or other improvements, or with the sale of the Lots by Declarant. Declarant may make such use of the unsold Residence Units as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, model units, signs, storage areas, construction facilities, and construction offices for the sale of the Lot and sale and construction of the Residence Units covered by this Declaration.

## **ARTICLE 23**

### **MISCELLANEOUS**

**23.1 Multiple Owners.** If any Lot shall be owned as tenants in common by two or more persons, such persons shall be jointly and severally liable for the Common Expenses assessed against such Lot and for the prompt discharge of each and every obligation or duty imposed on such Owners by the Declaration and other governing documents.

**23.2 Applicability to Third Parties.** Each Owner of a Lot and each Owner, lessee, tenant or occupant of a Residence Unit shall be bound to comply with all applicable statutory provisions and shall comply with these documents as the same may be in effect from time to time and with the decisions, resolutions, rules and regulations of the Association, and Declarant as the same may be in effect from time to time, and failure to do so shall be grounds for an action to recover damages or to obtain injunctive and other equitable relief, or both.

**23.3 Conveyance.** Each Owner of a Lot, by acceptance of a deed therefor, agrees that he has had full opportunity to inspect and examine same and waives any claim or demand which he might otherwise have had against the Declarant or any other person whomsoever as a result of any warranty, express or implied, or of any discrepancy between the Lot as it then exists and as it is described in this Declaration, filed plats, the supplemental plats, the architectural plans and specifications or any other instrument.

**23.4 Perpetuities.** In any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one

(21) years after the date of the survivor of the now living descendants of George W. Bush, President of the United States, and William Jefferson Clinton, Ronald Wilson Regan, James Earl Carter, Gerald T. Ford and Richard Milhaus Nixon, former Presidents of the United States.

**23.5 Severability.** Invalidation of any of these covenants or restrictions by judgment or court shall in no way affect any other provisions, which shall remain in full force and effect.

**23.6 Rights of Mortgagees.** Any mortgagee holding a first mortgage on any Lot may require that the loan documents evidencing and securing such loan contain provisions relating to reserve accounts for repairs and replacements, additional insurance, voting rights and such other matters as may be acceptable to the mortgagee and the Owner. However, such provisions shall be binding only as between such mortgagee and Owner and no such provision shall violate, restrict or modify the provisions of this Declaration and the other governing documents.

**23.7 Declarant's Facilities.** No Lot Owner or any other person shall have any rights of any nature, express or implied, in any adjacent recreational or other facility owned by Declarant or other party not included as a part of the Property, and the Owner thereof shall have the unrestricted right at any time, and from time to time, to lease, mortgage or otherwise convey or encumber, modify, close, terminate, limit operations and the membership, expand and otherwise manage and control any such facilities and other property.

**23.8 Inspection and Maintenance.** If any Property, including any Lot is not maintained as provided herein, Declarant shall have the right, but not the obligation, to maintain same and recover from the Association and the respective Owners its costs incurred in providing such maintenance. Any Member of the Board, Declarant's maintenance personnel, or any other person authorized by the Board, shall have reasonable rights of access to all Common Elements and Lots for the purposes of inspection, maintenance, repair or replacement of any part of the Property as provided in this section.

**23.9 Waiver.** The failure of the Association, the Declarant or any Lot Owner  
~~23.9~~ **waiver.** The failure of the Association, the Declarant or any Lot Owner  
to enforce any covenant, restriction or other provision of the documents shall not  
constitute a waiver of the right to do so thereafter.

**23.10 Construction.** If any provision, sentence, clause, phrase or word of this  
Declaration or any other Association document is judicially held invalid or  
unenforceable for any reason, such holding shall not be deemed to affect, alter, modify  
or impair in any manner any other provision herein or in said documents. Whenever  
the context so permits, the use of the plural shall include the singular, the singular  
the plural, and the use of any gender shall be deemed to include all genders. The  
captions used herein and in the other Association documents are solely to aid in the  
location of the various provisions, and in no way shall such captions be construed to  
limit or define the subject matter of such provisions.

**[the remainder of this page is intentionally left blank]**

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its name by its Manager(s), adopting the designation (SEAL) beside that of its Manager(s) as its own, the day and year first above written.

Alimax, L.L.C.

*Mark E. Brenner*

(LIMITED LIABILITY COMPANY SEAL)

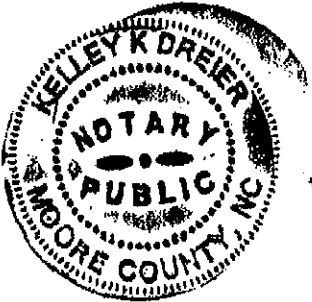
Mark E. Brenner  
Manager

NORTH CAROLINA  
Moore COUNTY

I, Notary Public of the County and State aforesaid, certify that Mark E. Brenner personally appeared before me this day and acknowledged that he is Manager of Alimax, L.L.C., a limited liability company, and that he, as Manager, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company. Witness my hand and official seal, this the 15 day of October, 2004.

My commission expires: My Commission Expires October 23, 2007  
Notary Public

*Kelley K Dreier*



IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its name by ~~IN WITNESS WHEREOF, the Grantor~~ (SEAL) beside that of its President as its own, the day and year first above written.

**The Cotswold Townhomes Association**

*Alexander N. Pelliccio*

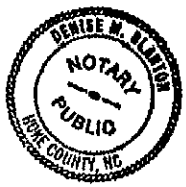
(CORPORATE SEAL)

Alexander N. Pelliccio  
President

NORTH CAROLINA  
*Noke* COUNTY

I, Notary Public of the County and State aforesaid, certify that Alexander N. Pelliccio personally appeared before me this day and acknowledged that he is President of The Cotswold Townhomes Association, a corporation, and that he, as ~~Pres.~~ being authorized to do so, executed the foregoing instrument on behalf of the corporation. ~~Witness~~ my hand and official seal, this the 19 day of October, 2004.

My commission expires: 7-8-2006 Denise M. Blanton  
Notary Public



IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its name by its President, adopting the designation (SEAL) beside that of its President as its own, the day and year first above written.

**Cotswold of Pinehurst Homeowners Association, Inc.**

*Edward J. Fogel*  
\_\_\_\_\_  
Edward J. Fogel  
President

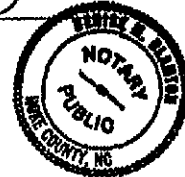
(CORPORATE SEAL)

NORTH CAROLINA  
Wake COUNTY

I, Notary Public of the County and State aforesaid, certify that Edward J. Fogel personally appeared before me this day and acknowledged that he is President of Cotswold of Pinehurst Homeowners Association, Inc., a corporation, and that he, as President, being authorized to do so, executed the foregoing instrument on behalf of the corporation. Witness my hand and official seal, this the 27 day of September, 2004.

My commission expires: 7-8-2006

*Denise M. Blanton*  
\_\_\_\_\_  
Notary Public



Planet Development, LLC joins in the execution of this instrument, pursuant to Section 1.09  
Planet Development, LLC joins in the execution of this instrument, pursuant to Section 1.09  
hereof, in order to evidence its acquiescence to and acceptance of the terms and conditions  
hereof.

IN WITNESS WHEREOF, Planet Development, LLC has caused this instrument to be signed in  
its name by its Manager(s), adopting the designation (SEAL) beside that of its Manager(s) as its  
own, the day and year first above written.

Planet Development, LLC

*Mark E. Brenner*

(LIMITED LIABILITY COMPANY SEAL)

Mark E. Brenner  
Manager

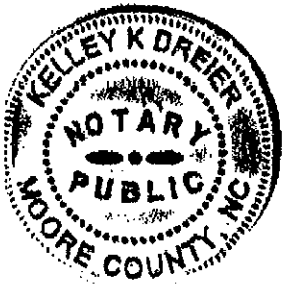
NORTH CAROLINA  
Moore COUNTY

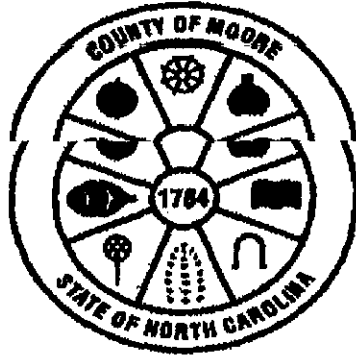
I, Notary Public of the County and State aforesaid, certify that Mark E. Brenner personally appeared  
before me this day and acknowledged that he is Manager of Planet Development, LLC, a limited liability  
company, and that he, as Manager, being authorized to do so, executed the foregoing instrument on  
behalf of the limited liability company. Witness my hand and official seal, this the 15 day of  
October, 2004.

My commission expires: My Commission Expires October 23, 2007

Notary Public

*Kelley K Dreier*





JUDY D. MARTIN  
REGISTER OF DEEDS, MOORE  
JUDICIAL BUILDING  
100 DOWD STREET  
CARTHAGE, NC 28327

\*\*\*\*\*

Filed For Registration: 10/20/2004 02:10:02 PM  
Book: RE 2667 Page: 309-375  
Document No.: 2004020338  
DECL 67 PGS \$209.00

Recorder: LINDA CHEEK

\*\*\*\*\*

State of North Carolina, County of Moore

The foregoing certificate of DENISE M BLANTON , KELLEY K DREIER Notaries are certified to be correct. This  
20TH of October 2004

JUDY D. MARTIN , REGISTER OF DEEDS

By: Regina Lamm

Deputy/Assistant Register of Deeds

\*\*\*\*\*

**\*2004020338\***

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