

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR: HOLLYHOCK

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HOLLYHOCK

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STATE OF NORTH CAROLINA
COUNTY OF _____

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR HOLLYHOCK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of the ____ day of _____, 20__ by _____

("Declarant"), a North Carolina limited liability company with offices located in _____ (City):

North Carolina capitalized terms shall have the meaning set forth in **Article I** or elsewhere in this Declaration.

BACKGROUND STATEMENT

Declarant is the owner of or may hereafter acquire real- property located in _____ County, North Carolina ("Entire Parcel"). The Entire Parcel is more particularly described on **Exhibit A** attached hereto. Declarant desires to provide for the creation on the Phase I Parcel (as defined below) a single family community consisting of single-family Lots ("Lots"), together with certain common areas and facilities, and may elect in the future to expand the development onto other portions of the Entire Parcel. This development ("Project") shall be known as Hollyhock.

The initial phase of the Project is being constructed on a portion of the Entire Parcel containing approximately _____ acres of land ("Phase I Parcel"). An initial subdivision plat of the Phase I Parcel ("Phase I Plat") is recorded in: Map Book ____ at Pages ____ - ____ in the _____ County Public Registry.

In creating the Project, Declarant desires to develop a residential community, with certain common areas and facilities to be used for the benefit of the owners of Lots within the Project. Declarant desires to provide for the preservation of the values and amenities within the Project and for the maintenance of the common areas and facilities in the Project, and therefore desires to subject the Phase I Parcel the covenants, restrictions, easements, charges and liens described in this Declaration, all for the benefit of the Phase 1 Parcel and each owner of any part of the Phase I Parcel. As subsequent phases of the Project are constructed on other portions of the Entire Parcel, Declarant desires to reserve the right to subject such other portions of the Entire Parcel to the covenants, restrictions, easements, charges and liens described in this Declaration.

Declarant has deemed it desirable to create a nonprofit, incorporated association which will be delegated and assigned powers of maintaining and administering the common areas and facilities of the Project, of administering and enforcing the covenants and restrictions created in this Declaration, of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of the Lots and to promote the recreation, health, safety and welfare of the owners of the Lots within the Project. In order to accomplish the foregoing, Declarant is entering into this Declaration.

STATEMENT OF DECLARATION

NOW, THEREFORE, Declarant hereby declares that (subject to certain rights. of amendment as hereinafter described) all of the Phase I Parcel shall be held, transferred, sold, conveyed, occupied and used subject to the North Carolina Planned Community Act, codified in Chapter 47F of the North Carolina General Statutes ("Act") and to the following easements, restrictions, covenants and conditions, which shall run with the Phase I Parcel and be binding on and inure to the benefit of, all parties having any right, title or interest in the Phase I parcel or any part thereof, and the heirs, successors and assigns of all of the foregoing parties.

ARTICLE I

DEFINITIONS

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

Section 1.1. "Additional Property" shall mean and refer to additional real estate which is part of the Entire Parcel and which may be made subject to the terms of this Declaration in accordance with the provisions of **Article II** of this Declaration.

Section 1.2. "Architectural Control Committee" shall mean and refer to the committee appointed by the Board to oversee the development and enforcement of architectural control standards and restrictions with respect to the Project and to perform certain other functions as described in **Article IX** of this Declaration.

Section 1.3. "Architectural and Landscaping Guidelines" shall have the meaning set forth in **Article IX** hereof.

Section 1.4. "Association" shall mean and refer to Hollyhock Homeowners Association, Inc., a North Carolina non-profit corporation, organized pursuant to N.C.G.S. § 47F-3-101 and 55A-2-02, and its successors and assigns.

Section 1.5. "Board" shall mean and refer to the executive board of the Association.

Section 1.6. "Bylaws" shall mean the bylaws adopted by the Association pursuant to the North Carolina Non-Profit Corporation Act, as they may be amended from time to time.

Section 1.7. "Certificate of Occupancy" shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any House on the Property.

Section 1.8. "Common Area" shall mean and refer to all real and personal property leased or owned by the Association, and the easements granted to the Association, for the common use and enjoyment of the Owners and all facilities or improvements thereon. The Common Area to be owned in fee simple by the Association at the time of the conveyance of the first Lot by Declarant to an Owner is all of the Phase I Parcel outside of the boundaries of individually platted Lots, as designated on the Phase I Plat. Without limiting the generality of the foregoing, the Common Area includes all areas designated as "Common Open Space", "Boat Storage", "The Greenways", "Community Center", "Park" or "Recreation Amenity" on the Plat, but shall not include any area designated as "Future Development" on the Plat.

Section 1.9. "Declarant" shall mean and refer to _____, a North-Carolina limited liability company. It shall also include any person or entity who takes title to all of the Entire Parcel and who is designated in the deed of conveyance or a separate recorded instrument to be the "Declarant"; provided that from and after the time of such conveyance, the transferor's status as Declarant shall cease as to the Entire Parcel.

Section 1.14. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as it may be amended, supplemented or extended from time to time.

Section 1.11. "Entire Parcel" shall mean and refer to the teal property described on Exhibit A attached hereto.

Section 1.12. "Entrance Monument Easement" shall mean and refer to the easements reserved by Declarant and granted to the Association in **Article X** hereof over, across and under certain areas of the Property, for the installation and maintenance of entrance monuments, landscaping and other related improvements for the Project all as more particularly described in **Article X**.

Section 1.13. "Guidelines" shall mean and refer to the Architectural and Landscape Guidelines described in **Article IX**.

Section 1.14. "House" shall mean and refer to the primary residential dwelling improvement constructed upon a Lot, which improvement is owned by the Owner of the Lot on which it is constructed, and subject to the terms and provisions of the Project Documents.

Section 1.15. "Lake" shall mean and refer to that body of water commonly known as Lake _____ which is located adjacent to the Project.

Section 1.16. "Lake Access Areas" shall mean and refer to the portion(s) of the Project designated on any plat for use by Owners for the purpose of access to and from the Lake.

Section 1.17. "Lot" shall mean and refer to any numbered plot of land, with the exception of the Common Area, appearing on any Plat of the Property.

Section 1.18. "Member" shall mean and refer to every individual, corporation, partnership, limited liability company, association, trustee or other legal entity that is a member of the Association as provided in **Article IV, Section 4.1**.

Section 1.19. "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a first lien on a Lot.

Section 1.20. "Mortgagee" shall mean and refer to an Institutional Lender holding a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Lot. Upon request, each Owner shall provide the name and address of the then current holder of any Mortgage encumbering Owner's Lot.

Section 1.21. "Occupant" shall mean and refer to any person occupying all or any portion of a Lot or any portion of the Property for any period of time.

Section 1.22. "Owner" shall mean and refer to the record whether one or more persons or entities, of fee simple title to any Lot (as defined herein) is a part of the Property, but excluding those parties who have such interest merely as security for the performance of an obligation.

Section 1.23. "Phase shall mean and refer; to any phase, section or portion of the Property for which a separate Plat or Plats are recorded in the office of the Register of Deeds for _____ County, North Carolina.

Section 1.24. "Phase I Parcel" shall mean and refer to the property described in **Exhibit B** attached hereto, and being all of the property shown on the Phase I Plat, other than the areas labeled "Future Development,"

Section 1.25. "Phase I Plat" shall mean and refer to the subdivision map of the Phase I Parcel, which is recorded in Map Book _____ at Pages ____ - ____ in the _____ County Public Registry.

Section 1.26. "Plat" shall mean and refer to any plat of the Property or any part of it which is recorded from time to time in the office of the Register of Deeds for _____ County, North Carolina.

Section 1.27. "Project" shall mean and refer to the single-residential development located on the Property, which shall be known as Hollyhock.

Section 1.28. "Project Documents" shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws, Guidelines addressing construction, landscaping and other issues, and the rules and regulations governing the use of the Property, as the foregoing maybe amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.29. "Property" shall mean and refer to the Phase I Parcel, and any other portion of the Entire Parcel which is subjected to this Declaration under the provisions of **Article II** below.

Section 1.30. "Roadways" shall mean and refer to the roads, streets, entranceways and cul-de-sacs in the Project as shown on the Plats and any other roads, streets, entranceways and cul-de-sacs on the Property which shall be maintained by the Association unless and until accepted for maintenance by the North Carolina Department of Transportation or other governmental entity.

Section 1.31. "Street Lights" shall mean and refer to those certain street lights which may be constructed or installed (whether leased or owned by the Declarant or Association) upon, along and/or over the rights-of-way of the Roadways, Lots or Common Areas.

Section 1.32. "Turnover Date" shall have the meaning set forth in **Article IV** hereof.

Section 1.33. "Water System" shall have the meaning set forth in **Article VI** hereof.

Section 1.34. "Waterfront Lots" shall mean and refer to all Lots which border the Lake.

ARTICLE II

EXPANSION OF PROJECT

Section 2.1 General. Declarant may, but shall not be required to, construct the Project in phases on the Entire Parcel. Only the Phase I Parcel is being subjected to the operation of this Declaration as of the date of the initial execution and recording of this Declaration. Additional portions of the Entire Parcel and improvements thereon, including Common Areas, may be subjected to the provisions of this Declaration and the other Project Documents in the manner provided in this **Article II**.

Section 2.2 Additions by Declarant. Declarant reserves an option, until the 10th (10th) anniversary of the date of recording of this Declaration, to subject to this Declaration additional land located within the Entire Parcel, in accordance with the provisions of this **Article II**. Any additional land so subjected must be contiguous to the Property .and must be shown on a recorded subdivision plat. **Declarant may exercise this right within the ten (10) year period specified above**, without the consent or approval of the Association, or any other Owner or Mortgagee, by executing and recording a Supplemental Declaration in the manner provided in **Section 2.3** below.

Section 2.3 Supplemental Declaration. In order to exercise any right to subject other portions of the Entire Parcel to this Declaration, Declarant shall execute and record a supplement to this Declaration (a "Supplemental Declaration"). Any Supplemental Declaration executed and recorded by Declarant shall contain an exhibit legally describing the tract or parcel to be added to the Property.

Any such Supplemental Declaration also may contain such additions to the provisions of this Declaration as may be necessary to reflect the different character of the new area included or Lots created by Declarant, so long as such additions are not inconsistent with the overall scheme of the Declaration, and provided that such additions shall not apply to any Lot conveyed by Declarant prior to recordation of Supplemental Declaration, or to the Owner or Mortgagee of any such Lot.

Section 2.4 Conveyance of Common Area. Following the recording of each Supplemental Declaration, Declarant shall convey to the Association the Common Area located within the Additional Property being subjected to this Declaration, as provided in **Section 3.2**.

ARTICLE III

COMMON AREA

Section 3.1 Owners Easements of Enjoyment. Every Owner shall have a perpetual right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the terms of this **Section 3.1**. The foregoing easement rights include, without limitation, a non-exclusive easement over all Roadways, streets, driveways, walkways and parking areas within the Property, for the purpose of vehicular and pedestrian access, ingress and egress to each Lot. The access easements described in the preceding sentence the expiration or termination of this Declaration, and shall continue as a burden running with the Property unless and until such reasonable access, ingress and egress is provided by the dedication of a public street or by the conveyance in fee or by the grant of a perpetual easement in one or more strips of land adequate for that purpose.

All easements created by this **Section 3.1** shall be deemed appurtenant to each Lot, shall inure to the benefit of each Owner and his tenants, family members, guests; invitees and agents, and are granted subject to the provisions of this Declaration including, without limitation, the following conditions and reservations:

- (a) The right of the Association, in accordance with the provisions of **Section 3.7** and the Project Documents, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure,
- (c) The rights of the Association, as provided in the Project Documents and the Act, including without limitation, to impose fines and to suspend the voting rights of any Member and the enjoyment rights of any Member in the Common Area (except the right of pedestrian or vehicular access to the Member's Lot and the right of access to utility services for such Lot), for any period during which any assessment remains unpaid, or as a result of any infraction or violation of the Project Documents;
- (d) The right of the Association, in accordance with the provisions of **Section 3.7** and the Project Documents dedicate or transfer all or any part of the Common Area;
- (e) The right of Declarant, prior to the conveyance of the Common Area to the Association, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Area, for the installation, maintenance and inspection of utility and drainage facilities, as provided in **Section 10.6**;
- (f) The easements over the Common Area described in **Section 10.10**;
- (g) The right of the Association to limit the number of guests of Members as to the use of the Common Area or any other property of the Association;
- (h) The right of the Association to establish reasonable rules and regulations for the use of Property by Members or their tenants, family members, guests, invitees and agents, as provided in **Article XI**; and
- (i) Any and all other provisions of this Declaration and the Property Documents.

Section 3.2 Title to Common Area. Declarant covenants for itself, its successors and assigns, that it shall convey fee simple title to the Common Area within the Phase I Parcel to the Association as soon as commercially practicable following the date of recordation of the deed conveying the first Lot to an Owner other than Declarant. As subsequent portions of the Entire Parcel are subjected to this Declaration, as provided in **Article II**, Declarant shall convey fee simple title to the Common Area within such property, as designated on the Plat showing such property, to the Association as soon as commercially practicable following the date of recordation of the deed conveying the first Lot in that phase to an Owner other than Declarant. Each such conveyance shall be free and clear of all liens and encumbrances, except the rights, restrictions, and easements set forth in this Declaration, including the easements referenced in **Section 10.7**; other public and private access, utility and drainage easements, easements to governmental authorities, and ad valorem taxes for the year in

which such conveyance occurs. Ad Valorem taxes shall be prorated between the Declarant and the Association as of the date of conveyance and the Declarant will pay its prorated share to the Association which will pay the taxes when due.

The Declarant reserves the right (but shall not be obligated) to construct and install within the Common Areas, among other things, (i) pathways and other improvements within the Lake Access Areas and other similar Common Areas, (ii) the Street Lights and other lighting, signage and irrigation facilities, (iii) the Water System, (iv) the Roadways (including parking areas, sidewalks, drainage facilities and other improvements) and (v) certain recreational amenities and facilities for the use and enjoyment of the Owners who are entitled to use such Common Areas as provided in this Declaration. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public (with the exception of the Roadways, if accepted for public dedication and maintenance by the North Carolina Department of Transportation or other governmental entity).

Section 3.3 Delegation of Use. Any Owner may delegate, in accordance with the Project Documents, his rights of enjoyment to the Common Area to members of his family, tenants or contract purchasers who reside on the Property, or to such other persons as maybe permitted by the Association and subject to such rules and regulations as may be made pursuant to **Section 11.27**.

Section 3.4 Maintenance. Prior to their acceptance for public maintenance, the Roadways shall be maintained by the Association, provided that the Declarant, in its sole discretion, has the right to reimburse the Association for maintenance costs until the Roadways are accepted for maintenance by the North Carolina Department of Transportation or other governmental entity. Such maintenance shall include repair and reconstruction, when necessary. Maintenance of the Roadways shall conform to the standard of maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental entity before it would accept such Roadways for maintenance. Notwithstanding anything herein to the contrary, nothing herein shall require the Association or the Declarant to cause the Roadways to be accepted for maintenance by the North Carolina Department of Transportation.

The Common Areas and the Entrance Monument Easements, together withal utilities, easements and amenities located therein and not otherwise maintained by public entities or utilities or any other party as provided herein, shall be maintained by the Association without limitation, the following:

- (a) Maintenance of the entryways to the Project shall include maintenance, repair and reconstruction, when necessary, of the entrance monuments, signage, irrigation, planters and lighting located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the entrance monuments and signage located thereon.
- (b) Maintenance of the parking areas(s) or Common Areas (if any) shall include the maintenance, repair and reconstruction, when necessary, of-the parking area(s) or Common Area, including all lighting, water lines and other fixtures, wire, railings and other facilities located thereon, and providing and paying for utility charges and other operational costs.
- (c) To the extent not maintained by the North Carolina Department of Transportation or other governmental entity, as the ease may be, the Association shall maintain or cause to be maintained the swales and medians and associated landscaping and related improvements along and within the right-of-way of the Roadways.
- (d) Maintenance of all areas and facilities for which the Association is responsible hereunder clean and free from debris and in a safe and orderly condition, together with the landscaping thereon (if any), in accordance with the highest standards for first-class residential developments located in the _____ County, North Carolina, metropolitan area, including any removal and replacement of any landscaping, utilities, or improvements located thereon.
- (e) Maintenance of the Lake Access Areas and other Common Areas shall be limited to maintaining the paths constructed thereon (if any) in passable condition for pedestrian use, and in accordance with the construction standards and materials as the original paths constructed by Declarant (if any), reasonable wear and tear excepted.
- (f) Maintenance and operation of the Water System should the Association need to do so under **Article VI** below.
- (g) The Association shall not be responsible for the maintenance of any Lot of any portion of any Lot or the improvements within the boundaries thereof, including, without limitation, any House or any dock, pier or boat slip located adjacent to any Waterfront Lot. The Owners of such Lots shall be solely responsible for same.

Section 3.5 Reserve Fund(s). The Association may establish and maintain reserve fund(s) for the periodic maintenance, repair and replacement of all or a portion of the Common Areas and in order to fund unanticipated expenses of the Association or to acquire equipment or services as may from time to time be deemed reasonable, necessary or desirable by the Board of Directors. Such reserve fund(s) shall be collected and maintained out of the assessments, as hereinafter provided **Article V**. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments.

Section 3.6 Conveyance or Encumbrance of Common Area. While the Property remains subject to this Declaration, no conveyances shall be made of any portion of the Common Area nor shall any security interest or lien of any nature arise or be created against the Common Area except as permitted under N.C.G.S. § 47F-3- 112. This section shall not apply to a grant or transfer of an easement or right-of-way. For so long as the Declarant owns any Lot, agreement to any such action must be obtained from the Declarant and from Owners entitled to cast the statutorily required percentage, excluding and without consideration of any votes allocated to a Lot or Lots owned by the Declarant. Any grant of a mortgage or security interest in the Common Area shall expressly be subject to the rights and easements created by this Declaration. Every agreement for the performance of labor or the furnishing of materials to the Common Area whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration.

Section 3.7 Piers and Common Boat Slips. Subject to and contingent upon the approval of the Federal Regulatory Commission, Duke Energy Corporation and any other regulatory body having jurisdiction, Declarant and Association (or another association created by Declarant or the Association) shall have the exclusive right to construct piers and common boat slips for use by off water Lot Owners adjacent to, on or over the Lake. The total distance of the shoreline of the Project shall be used to calculate the number of commercial residential boat slips available for construction, subject to approval by the aforementioned regulatory bodies.

ARTICLE IV THE ASSOCIATION

Section 4.1 Automatic Membership. All Owners shall automatically be Members of the Association, and shall enjoy the privileges and be bound by the obligations contained in the Project Documents, including the obligation to pay assessments. Ownership of any fee or undivided interest in any Lot shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. The Board may make reasonable rules regarding proof of ownership.

Section 4.2 Voting Rights. There shall be two classes of Lots and Members with respect to voting rights in the Association:

- (a) Class A Lots shall be all Lots in the Project except for Class B Lots, as defined below. The Owner (or group of Owners) of each Class A Lot shall be entitled to one (1) vote in the Association. If a Lot is owned by more than one person or entity as tenants in common or tenants by the entirety, then each such person or entity shall be deemed an Owner and a Member of the Association, but in no event shall more than one (1) vote in the Association be cast with respect to each Class A Lot, as is more particularly set forth in the Bylaws.
- (b) Class B Lots shall be all Lots in the Project owned by Declarant that have not been converted to Class A Lots. The Declarant shall be entitled to ten (10) votes in the Association for each Class B Lot owned by it,

Section 4.3 Termination of Class B Lots and Membership. Notwithstanding anything contained herein to the contrary, the Class B Lots and Membership shall cease and be converted to Class A Lots and Membership upon the earliest to occur :of (a) the date on which the Declarant no longer owns any part of the Entire Parcel; (b) the date the Declarant shall elect, in its sole discretion, that Class B Memberships cease and be converted to Class -A Membership, which election must be made, if at all, by the execution and delivery of Written notice by the Declarant to the Board; or (c) December 31, 2030. The earliest to occur of (a), (b) or (c) shall be referred to as the "Turnover Date". After the Turnover Date and for so long as Declarant owns any part of the Property, the Declarant shall be a Class A Member.

Section 4.4 Directors Appointed by Declarant. As more specifically provided in the Bylaws, the initial Board and the members of all subsequent Boards serving prior to the Turnover Date shall consist of not less than three (3) Persons all of whom shall be appointed by Declarant. These persons may or may not be employees of Declarant, and need not be Members. Until these persons are replaced by elected Board members at the first annual meeting of Members after the Turnover Date, they shall constitute the Board of the Association and exercise all powers and duties granted to the Board in the Bylaws.

Section 4.5 Association to Maintain Books and Records. The Association shall maintain at all times current copies of all Project Documents, all rules and regulations concerning the Property, as well as its own books, records and financial statements as required by N.C.G.S. §47F-3-118(a) and the North Carolina Non-Profit Corporations Act.

Section 4.6 Management and Other Agreements. The Association shall professionally manage and shall enter into management and other agreements for the management, operation and administration of the Project, with the individual, firm or entity that the Association deems appropriate and in the best interest of the Project from time to time. A copy of all such agreements shall be made available to each Owner upon request. Any management and agreements for the ongoing provision of goods or services entered into by the Association shall provide that it may be canceled, with or without cause, upon no more than ninety (90) days' notice and without penalty at any time. Should the Association enter into a management agreement for the Property as permitted herein, the manager shall obtain and at all times maintain fidelity insurance as provided in Section 7.1(c) of this Declaration.

Section 4.7 Liability Limitations. Neither Declarant, nor any Member, nor the Board, nor any officers, directors, agents or employees of any of them shall be personally liable for debt contracted for or otherwise incurred by the Association or for a tort of another Member, whether not such other Member was acting on behalf of the Association or otherwise. Neither Declarant or the Association, nor their directors, officers, agents or employees shall be liable for any identical or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Neither the Declarant, the Association nor any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

ARTICLE V

OPERATION OF THE PROPERTY AND ASSESSMENTS

Section 5.4 Adoption of Budget: Creation of Lien and Personal Obligation for Assessments. The Board shall, from time to time and at least annually, prepare and adopt a proposed budget for Project, determine the amount of expenditures payable by the Owners to meet the proposed budget ("Common Expenses") and allocate and assess Common Expenses among the Owners as provided in **Section 5.6**. The Common Expenses shall include such amounts as the Board deems necessary for the operation and maintenance of the Property and shall include, without limitation, amounts for purposes set forth in **Section 5.2**, amounts for permitted reserves and such amounts as maybe necessary to make up any deficit for outstanding Common Expenses for any previous year. No proposed budget shall be effective until ratified as provided in N.C.G.S. § 47F-3-104(c).

Each Owner of any Lot or portion of the Property other than the Declarant, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges of the Association, (2) Supplemental Annual Assessments, (3) Special Assessments, and (4) Special Individual Assessments, such assessments to be established and collected as hereinafter provided. Each annual and special assessment, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal financial obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title (other than as a lien on the Lot) unless expressly assumed by them. Declarant shall be exempt from all assessments relating to any portion of the Property owned by Declarant.

Section 5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and other residents of the Property to the fullest extent authority or responsibility is granted to the Association hereunder including, and without limiting the generality of the foregoing, for the leasing, acquisition improvement, maintenance and operation of the Property including, without limitation, that specified in **Section 3.4**; provision of services and facilities devoted to this purpose and related to the use and enjoyment of the Property, including but not limited to maintenance, landscaping and security services; payment of taxes and governmental assessments on the Common Areas; payment of insurance premiums for the insurance policies maintained by the Association in accordance with the Project Documents; payment in connection with the Water System, Street, Lights or other utilities serving the Property; payment of management fees to a property manager in accordance with **Section 5.14**; the employment of attorneys, architects, accountants and other professionals to represent or assist the Association deemed necessary or appropriate by the Board the cost of utilities and fuel used in operating facilities in the Common Area; the maintenance and upkeep of all Roadways in the Property; for reserves as permitted in **Section 3.5** and to carry out all other purposes and duties of the Association, the Board or the Architectural Control Committee as provided in the Project Documents.

Section 5.3 Payment of Annual Assessments; Due Dates and Maximums. Each Owner of a Lot shall pay to the Association Annual Assessments as hereinafter set forth,

(a) Annual assessments provided for herein shall commence as to any Lot as of the date of the conveyance by Declarant to an Owner (Other than Declarant) of such Lot. The Annual Assessment for the first year in which a Lot is subject thereto shall be prorated based upon the number of days remaining in the applicable billing period from the date of such conveyance. The Annual Assessment amount of each and every year shall be in an amount as set by the Board of Directors, in accordance with the terms of this **Article V**. Annual Assessments shall be due and payable in advance: in full or in installments as determined by the Board. The Board shall fix the amount of the Annual Assessment as to each Lot for any calendar year and shall send written notice of the amount of and due date of each installment of such Annual Assessment to each Owner at least thirty (30) days prior to the due date for payment of the assessment or first installment thereof, provided, however, the failure of the Association to send, or of an Owner to receive, such notice shall not relieve any Owner the obligation to pay Annual Assessments. Notwithstanding the foregoing, for calendar years beginning prior to the Turnover Date, and in lieu of payment

of Annual Assessments, Declarant shall be responsible for paying for each such calendar year that portion of the annual expenses of the Association (excluding any reserves) which exceeds the total amount of the Annual Assessments paid by the Owners other than Declarant.

(b) The maximum Annual Assessment for calendar years through and including 2004 shall be Seven Hundred Ninety Five (\$795) per Lot for calendar year 2005 and thereafter, the Board, by a vote in accordance with the Bylaws, without a vote of the Members, may increase the Annual Assessment applicable to each Lot by a maximum amount equal to the previous year's Annual Assessment times the greater of (i) twenty percent (20%) or (ii) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then the index most similar to the CPI published by the United States Government indicating changes in the cost of living shall be used. If the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision the difference between any actual increase which is made and the maximum increase permitted that year shall be computed and the Annual Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence of such future year, by a vote of the Board, without a vote of the Members.

(c) For calendar year 2005 and thereafter, the maximum annual assessment applicable to each Lot may be increased above the maximum amount set forth in subparagraph (a) Of this Section 5.3 by a vote of a majority of the votes appurtenant to the Lots Which are then subject to this Declaration, plus the written consent of Declarant as long as Declarant owns any part of the Property.

(d) The Board may fix the Annual Assessment applicable to each Lot at an amount not in excess of the maximum set forth in Subparagraph (b) of this **Section 5** (the "Maximum Annual Assessment"). If the Board shall levy less than the maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a "Supplemental Annual Assessment." In no event shall the sum of the Annual and Supplemental Annual Assessments for any year exceed the applicable Maximum Annual Assessment for such year unless approved as specified in Subparagraph (c).

(e) With respect to any Lot conveyed by Declarant, the purchaser of such Lot shall pay to the Association at closing the amount of the Annual Assessment for the installment period in which the closing occurs on such Lot, prorated based upon the number of days remaining in such installment period. With respect to any Lot conveyed by any Owner other than Declarant the amount of the Annual Assessment applicable to such Lot for the installment period in which such closing occurs shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

(f) Declarant shall have the authority (but not the obligation) to reduce the Annual Assessment (i) on any Lot on which no House has been completed (i.e., no Certificate of Occupancy has been issued), or (ii) on any Lot owned by a Featured Builder (as defined below) until such time as the Featured Builder sells or otherwise transfers ownership of its Lot.

Section 5.4 Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) the construction of any Common Area improvements which are not originally constructed by Declarant or (ii) the reconstruction, repair or replacement of the Common Areas, including any improvements located thereon. Provided, however, (a) Declarant shall not be obligated to pay any Special Assessments on Lots owned by Declarant except with Declarant's prior written approval, and (b) any Special Assessment must be approved by Declarant as long as Declarant owns any part of the Property and by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration.

Section 5.5 Special Individual Assessments. In addition to the Annual Assessments and Special Assessments authorized above, the Board shall have the power to levy a special assessment applicable to any particular Owner ("Special Individual Assessment"), (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, including any improvements located thereon, whether occasioned by any act or omission of such Owner(s), members of such Owner's family or such Owner's agents; guests, employees, tenants or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against any particular Owner relative to such Owners failure to comply with the terms and provisions of this Declaration or the Project Documents, as permitted by the Act. Provided, however, Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied shall be fixed in the Board resolution levying such Special Individual Assessment. Upon the establishment of a Special Individual Assessment the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 5.6 Uniform Rate of Assessment. Annual Assessments, Supplemental Annual Assessments and Special Assessments levied by the Association must be fixed at a uniform rate for all Lots. Notwithstanding the preceding sentence, assessments may be based on the occupiable or heated area within each Lot (in the case of utility charges); the replacement value or assessed value of each Lot (in the case of insurance premiums), or some other reasonable criteria.

Section 5.7 Effect of Nonpayment of Assessments. Remedies of the Association. If any assessment, or monthly installment thereof, is not paid within thirty (30) days after its due date, the Board may, at its option and without further notice, declare the entire unpaid assessment, both annual and special, immediately due and payable. Unpaid assessments shall bear interest from and after the due date at the rate of eighteen percent (18%) per annum, not to exceed, however, the maximum rate permitted by law. In addition, the Association may impose a reasonable charge for late payment of any assessments (which charge maybe imposed once in any month during which an assessment or any portion thereof remains unpaid) and shall be entitled to recover fees and penalties for returned checks as permitted in MC.G.S. § 6-21.3 and N.C.G.S. § 25-3-506. The Association may enforce assessment obligations as permitted by law, including, without limitation, by filing and foreclosing a claim alien in accordance with the procedures set forth in N.C.G.S. §-47F-3-116, and/or by bringing an action at law against the Owner personally obligated to pay the assessment and/or foreclose the lien against his Lot to collect said assessment. Interest, late charges and reasonable attorneys' fees and costs of such action or foreclosure shall he added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure. Foreclosure may be accomplished in an action brought in the name of the Association in the manner that a foreclosure of a mortgage or deed of trust would be brought under Chapter 45 of the North Carolina General Statutes, or as otherwise expressly provided by law, and each Owner grants to the Association a power of sale in connection with any such charge or lien. The Association, acting on behalf of the Owners, shall have the power to bid on any Lot and to acquire and hold, lease, mortgage and convey the same. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREA OR ABANDONMENT OF HIS LOT.

During any period in which an Owner is in default in the payment of any installment of an annual, special or other assessment levied by the Association, the voting rights of the Owner in the Association and the right to the use of the Common Area or any other services of facilities which is provided by the Association (except the right of access to the Owner's Lot and the right of access to utility service for such Lot) may be suspended by the Association until such assessment is paid as provided under N.C.G.S. § 47F-3-102(11). During any period in which an Owner is in default in the payment of any installment of an annual, special or other assessment levied by the Association, the Board may also notify the owner and holder of any mortgage of deed of trust of a delinquency relating to the Lot encumbered by that mortgage or deed of trust.

Section 5.8 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage on any Lot, and shall be subordinate to any tax lien or special assessment on a Lot made by lawful governmental authority. Sale or transfer of any Lot shall not affect the assessment lien. However, the foreclosure of any Mortgage shall extinguish the lien of such assessments as to payments which became due prior to the time the foreclosure sale is final at which time the high bidder and new Owner shall become responsible for payment of all assessments coming due thereafter. Such unpaid assessments shall be deemed to be expenses of the Association assessable against and collectible from all Owners, including the Owner of the Lot acquired as result of foreclosure of the Mortgage, his heirs, successors and assigns. No-foreclosure-sale or transfer shall relieve such Lot from liability for assessments thereafter becoming due or from the lien thereof.

Section 5.9 Exempt Property. The following parts of the Property shall be exempt from assessment by the Association: (a) the Common Area; (b) portions of the Property owned by the Declarant, (c) portions of the Property used as part of the Water System; and (d) any part of the Property dedicated to and accepted by any public or governmental authority (the recording of this Declaration shall in no way be deemed a dedication of, or offer to dedicate, any part of the Property to any such authority).

Section 5.10 Voluntary Conveyance Estoppels. Except as provided in Section 5.8, the lien for assessments of the Association created in this Article V shall not be affected by any conveyance of a Lot, and shall remain a continuing charge on that Lot and a continuing lien which may be foreclosed as provided in Section 5.7. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board pursuant to N.C.G.S. §47F-3-118(b), setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in that statement.

ARTICLE VI

UTILITIES

Section 6.1 Utilities. All utilities and utility connections shall be located underground, including electrical, telephone and cable television lines. Transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the buildings constructed on Lots unless otherwise approved by the Architectural Control Committee in writing or required by the applicable utility provider.

Section 6.2 Public Water System: No Private Individual Wells. Declarant shall cause to be constructed a water system in order to provide water supplies: necessary to: serve the Project (the "Water System"). All water mains, pipes and other equipment necessary for the operation and maintenance of the Water System shall be located within the utility easements: described herein or within the Roadways right-of-way. Upon completion of the Water System and all mains, pipes and equipment and other personal property which are part thereof, Declarant or the Association shall use reasonable good faith efforts to dedicate the Water System to the Town of _____ or other governmental authority. All Owners are required to connect into the Water System for domestic water service. The Water System shall be the sole provider of water supply to the Project, and no well may be dug or constructed on any Lot.

Section 6.3 Public Sewer System: No Septic Tanks. Declarant shall cause to be constructed a sanitary sewer system in order to provide sanitary sewer service necessary to serve the Project (the "Sewer System"). All pipes and other equipment necessary for the operation and maintenance of the Sewer System shall be located within the utility easements described in this Declaration or within the Roadways right-of-way. Upon completion of the Sewer System and all mains, pipes and equipment and other personal property which is part thereof, Declarant or the Association shall use reasonable good efforts to dedicate the Sewer System to the Town of _____ or other governmental authority. All Owners are required to connect into the Sewer System for domestic sewer services. The Sewer System shall be the sole provider of sanitary sewer service to the Project, and no septic tank may be installed within any Lot for the purpose of providing domestic sewer service.

ARTICLE VII

INSURANCE AND RECONSTRUCTION

Section 7.1 Association Insurance. The Association shall procure and maintain, or cause to be maintained, insurance in accordance with the following provisions:

(a) **Property and Casualty Insurance.** The Association shall obtain and maintain at all times a policy or policies of property insurance covering all Common Areas and all improvements located in the Common Area, in an amount not less than one hundred percent (100%) of the replacement cost of such improvements at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the costs of land, excavation, paving, foundations and other normally excluded items, Said insurance may provide for coinsurance by the Association, of not greater than twenty (20%) percent and/or may include a commercially reasonable deductible not in excess of \$10,000.00. The Board shall, at least annually, review the insurance coverage required herein and determine the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, windstorm and water vandalism and malicious damage and all perils covered by a standard "all risk" endorsement and (if reasonably available) shall contain the following provisions:

- (1) standard "Agreed Amount" and "Inflation Guard" endorsements;
- (2) construction code endorsements if the Common Area becomes subject to a construction code provisions which would require changes to undamaged portions of any building thereby imposing significant costs in the event of partial destruction of such building by an insured peril;
- (3) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents tenants and invitees;
- (4) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion for the Property over which the Association has no control; and
- (5) coverage that Cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board without the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association or any Owner.

(b) **Liability Insurance.** The Association shall obtain and maintain a policy of commercial general liability insurance in such limits as the Association may, from time to time, determine, covering each member of the Board, the property manager, if any, and each Owner with respect to liability arising out of the operation, use, ownership, maintenance, or repair of the Common Area; provided, however, that in no event shall the limits of such policy ever be less than \$1,000,000.00 per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association and to all additional insureds. The Board shall review such limits annually.

(c) **Fidelity Insurance.** The Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers and employees of the Association and any other

persons who handle or are responsible for the handling of funds of the Association. The Association's manager shall also acquire and maintain fidelity insurance as required herein and under **Section 4.6**. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Association, but in no event less than one-half the annual budgeted amount of annual assessments.

(d) Other Insurance. The Board, or its duly authorized agent shall have the authority to and shall obtain and maintain in effect such other insurance coverage as the Board shall determine from time to time to be desirable, specifically including, without limitation, directors and officers liability insurance, flood insurance, performance bonds, payment on labor and material bonds and maintenance bonds.

(e) Insurance Unavailable. In the event the insurance described in Subsections (a) through (c) is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners. For purposes of this subsection, insurance will be deemed "not reasonably available" if the cost of that insurance is prohibitive in light of the Association's budget and available resources. In the event the Association determines any such insurance to be "not reasonably available it shall make reasonable steps to obtain insurance for the benefit of the Association and the Owners which is as closely equivalent" to the insurance coverage required in Subsections (a) through (c) that is reasonably available.

Section 7.2 Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as an expense of the Association, provided however, that deductibles and/or expenses paid or incurred by the Association as a result of the negligent or intentional act of any Owner, his agents, guests, invitees or family members, shall be charged to and paid by the Owner. All such premiums shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies.

Section 7.3 General Standards. All insurance policies maintained by the Association under this **Article VII** shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A or better in Best's Insurance Guide, provided that such insurance is available from a company with at least such a rating and that, in the event not so available, such insurance is obtained from a company with the highest rating available in Best's Insurance Guide. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Section 7.4 Insurance Proceed. Subject to any requirements or limitations imposed by § 47F-3-113, the Association shall use the net proceeds of property and casualty insurance to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of property and casualty insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area. If the insurance proceeds received by the association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment or Special Individual Assessment, as appropriate under the circumstances, to cover the deficiency.

Section 7.5 Owner's Personal Property. Neither the Association nor Declarant shall be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his family, tenants, guests or invitees, located on or used at the Common Area. Further, neither the Association nor Declarant shall be responsible or liable for any: image or loss to any personal property of any Owner, his family, tenants, guests or invitees located on or used at the Common Area. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property. Neither the Association nor Declarant shall be responsible or liable for any damage or loss to or of any boat, its tackle, gear, equipment or other property located thereon, or any other personal property of any Owner, his family, tenants, guests or invitees located on or used at the Piers, Common Boat Slips, or other Common Area. Each Owner shall be solely responsible for all such boats and other personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase, at such Owners' sole cost and expense, or any liability, or ether insurance for damage to or loss of such property.

Section 7.6 No Obligation to Insure Owners' Property. By virtue of taking title to a Lot within the Project, each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or any House or other property located thereon.

Section 7.7 Security. The Association may, in its sole discretion, but shall not be obligated to provide certain security and fire protection measures, and maintain or support certain other activities within the Project designed to make the Project safer than it might otherwise be. Provided, however, should the Association provide, maintain or support any such measures or activities, then neither the Association, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or fire protection within the Project, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason

or failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner and Occupant of any Lot or House and each tenant, guest and invitee thereof acknowledges and understands that neither the Association, Declarant nor any successor of Declarant are insurers, and each such Owner, and Occupant of a Lot or House and their tenants, guests and invitees hereby assume all risks for loss or damage to persons, property, or contents belonging to any such persons.

ARTICLE VIII

MAINTENANCE OF PROPERTY

Section 8.1 Maintenance by Association. The Association shall be responsible for the operation, maintenance and repair of the Common Area, as provided in **Section 3.4**. In addition the Association may be responsible for the maintenance and repair of all Roadways unless and until they are accepted for maintenance by ... entity, the Association may be responsible for the maintenance and repair of said right of way. Notwithstanding the foregoing, the Association shall not be responsible for any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of and may be charged to that Owner.

Section 8.2 Maintenance by Owners. The Owner of any Lot shall have the duty and responsibility, at such Owner's sole cost and expense; to keep: the Lot(s) owned by such Owner, including House and improvements thereon and ground and drainage easements or other rights-of-way incident thereto, in compliance with: the covenants, conditions, restrictions and development standards contained in this Declaration (to the extent applicable), and in any applicable Supplemental Declaration, in accordance with the provisions of the Architectural and Landscape Guidelines, and in a well-maintained, safe, clean and attractive condition at all times. Such maintenance, as to unimproved and improved Lots; shall include but shall not be limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and waste;
- (b) Keeping land, including any lawns and shrub beds, well maintained and free of trash, uncut grass and weeds;
- (c) Keeping all sediment resulting from land disturbance or construction confined to the respective Owner's property; and
- (d) Complying with all governmental health and police requirements.

In addition, such maintenance as to improved Lot(s) shall include, but shall not be limited to, the following:

- (a) Lawn mowing on a regular basis;
- (b) Tree and shrub pruning;
- (c) Watering by means of a lawn sprinkler system and/or hand watering as needed;
- (d) Keeping exterior lighting and mechanical facilities in working order;
- (e) Keeping lawn and garden areas alive;
- (f) Removing and replacing any dead plant material;
- (g) Maintenance of natural areas and landscaping in accordance with the Architectural Landscape Guidelines;
- (h) Keeping parking areas and driveways in good repair;
- (i) Repainting of Improvements; and
- (j) Repair of damage and deterioration to Improvements (as defined in **Section 9.4**), it being understood and agreed that if any Improvements are damaged or destroyed by fire or other casualty; then within six (6) months following the date such damage or destruction occurs, the Owner of the Lot on which such Improvements are situated; must repair and restore such damaged Improvements (in accordance with plans and specifications approved by the Architectural Control Committee and otherwise in accordance with terms and provisions of this Declaration and of each Supplemental Declaration applicable thereto) or remove such damaged improvements and restore the Lot to its condition existing prior to the construction of such House or improvements.

Notwithstanding anything contained herein to the contrary, the above-described maintenance responsibilities as to any Lot shall commence only upon a Plat showing such Lot being recorded in the Office of the Register of Deeds and upon the conveyance of such Lot by Declarant. If an Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth herein, then the Board and Declarant, either jointly or severally, may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such

notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the date and maintenance required or otherwise perform the duties and responsibilities of such Owner as described in herein. Provided, however, this cure period shall be extended for a time not to exceed sixty (60) days so long as Owner shall have commenced to cure such nonconformity and shall diligently prosecute the same.

Should any such Owner fail to fulfill this duty and responsibility within the period specified, then the Association, acting through its authorized agent or agents, or Declarant (so long as it owns any portion of the Property), acting through its authorized agent or agents, either jointly or severally, shall have the right and power to enter onto the premises of such Owner and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person.

The Owner of the Lot on which such work is performed shall be liable for the cost of such work, together with interest on the amounts expended by the Association or Declarant in performing such work computed at the highest lawful rate as shall be permitted by law from the date(s) such amounts are expended until repayment to the Association or Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and such Owner shall reimburse the Association or Declarant, as the case may be demand for such costs and expenses (including interest as above provided). If such Owner shall fail to reimburse the Association or Declarant, as the case may be, within thirty (30) days afire the mailing to such Owner of a statement for such costs and expenses, then, without limitation of any other rights of the Association or Declarant, the Association may impose a Special individual Assessment against such Owner enforceable as provided in **Section 5.7**.

ARTICLE IX

ARCHITECTURAL AND LANDSCAPING CONTROL

Section 9.1 General. Notwithstanding anything contained in this: Declaration to the contrary, no improvements, including, without limitation Site preparation on any Lot, change in grade or slope of any Lot, or erection of buildings or exterior additions of alterations to any building situated upon the Property, erection of or changes; or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot, shall be commenced, erected or maintained on any portion of the Property, subject to the provisions of **Section 9.7** hereof, until: (a) the Architectural Control Committee, appointed as hereinafter provided, has received and reviewed the plans and specifications therefor and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Architectural and Landscape Guidelines; (b) the fees set forth in or contemplated in this Article IX have been paid; and (c) the contracts identified in this Article IX have been executed. In addition to any standards established pursuant to this Declaration, Declarant may establish by Supplemental Declarations, other architectural and landscaping control standards, guidelines and restrictions in regard to various Phases or sections of the Property. Except as otherwise expressly provided herein, the provisions of this **Article IX** shall not apply to the construction of any improvements commenced, erected or maintained by Declarant on any part of the Property or Entire Parcel.

Section 9.2 Composition of Architectural Control Committee.

a. **Before "Release Date".** So long as Declarant owns any Lot or other portion of the Property, the members of the Architectural Control Committee shall be Declarant and/or persons appointed from time to time by Declarant (which may include architects or other professionals). Control of architectural and landscaping issues and decisions shall remain vested in Declarant until such time as Declarant no longer owns any Lot or other portion of the Property or at such earlier date as Declarant releases its right to appoint the members of the Architectural Control Committee by recordation of a written instrument in the Register of Deeds ("Release Date").

b. **After "Release Date".** The members of the Architectural Control Committee may be appointed by the Board after the Release Date. Pending appointment of members by the Board, the Board shall act as the Architectural Control Committee. The Architectural Control Committee will be composed of at least three (3) and not more than seven (7) individuals, the exact number of members of the Architectural Control Committee to be designated from time to time by the Board.

c. **Removal and Replacement of Committee Members.** The members of the Architectural Control Committee need not be Owners of Property in the Project. In the event of the death or resignation of any member of the Architectural Control Committee, the party or body then having the authority to appoint members to the Architectural Control Committee shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced at any time, with or without cause, and without prior notice by the party or body then having the authority to appoint such members.

d. **Professional Services.** Professional fees for services rendered may be charged to the Owner submitting a request and if unpaid shall become a Special Individual Assessment enforceable as provided in **Section 5.7**. Notwithstanding anything contained herein to the contrary, the Architectural Control Committee shall have the right, power and authority to employ and/or use the services of any

architects, engineers, attorneys or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Architectural Control Committee as described in this **Article IX**.

Section 9.3 Architectural and Landscape Guidelines.

a. The Architectural Control Committee may, from time to time, publish and promulgate architectural and design guidelines (the "Architectural Guidelines"). The Architectural Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for Improvements: (excluding only landscape Improvements, which are addressed in **Section 9.3**. The Architectural Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications (for the construction of non-landscape Improvements) to the Architectural Control Committee and the fees to be imposed by the Architectural Control Committee, as more specifically described in **Section 9.8**; and the Architectural Guidelines shall address the Featured Builders, as more specifically described in **Section 9.9**. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials. **In any event, the Architectural Guidelines shall not be binding upon the Architectural Control Committee, may be revised and amended at any time by the Architectural Control Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction for non-landscape Improvements) submitted to the Architectural Control Committee for approval.**

b. The Architectural Control Committee may, from time to time, publish and promulgate landscape guidelines (the "Landscape Guidelines"). The Landscape Guidelines shall be explanatory and illustrative of the general intent of the landscaping of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for landscape Improvements. The Landscape Guidelines shall also set out, among other things, the procedures for submission, review and approval of landscape plans and specifications to the Architectural Control Committee and the fees to be imposed by Architectural Control Committee, as more specifically described in **Section 9.8**. In addition, the Landscape Guidelines shall establish approved standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including removal of trees. Such authorized standards, methods and procedures shall be utilized by Owners and their contractors and subcontractors, and the approval by the Architectural Control Committee of any landscaping plan or other landscaping improvement in connection with landscaping on a Lot, shall be based upon the conformity of such plan or improvement with the Landscape Guidelines. **In any event, the Landscape Guidelines shall not be binding upon the Architectural Control Committee, may be revised and amended at any time by the Architectural Control Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of landscaping plans, specifications and other materials submitted to the Architectural Control Committee for approval.**

c. The Architectural Control Committee is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and builders performing work or constructing or installing Improvements (including landscape Improvements) on the Property.

d. The Architectural Guidelines, the Landscape Guidelines hereof and the construction rules shall herein collectively be referred to as the "Architectural and Landscape Guidelines". The Architectural Control Committee may issue and amend the Architectural and Landscape Guidelines from time to time and may publish and promulgate different Architectural and Landscape Guidelines for different Phases, sections or portions of the Property.

e. Without limiting the generality of the foregoing, Houses constructed on lots adjacent to the club house shall be in harmony as to color, design and materials with the stucco and stone gated entrances to the Project, the approval of which is in the sole discretion of the Architectural Control Committee.

Section: 9.4 Definition of 'Improvements'. The term "Improvement" or "Improvements" shall mean and include the House and any and all man-made changes or additions to a Lot or attached or affixed to a Lot (piers, boat slips, docks, etc.), including, but not limited to, the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; piers, docks and boat slips; roofed structures; parking or paved areas; fences; "invisible" pet fencing; pet "runs," lines and similar tethers or enclosures; walls, irrigation equipment, apparatus and systems; landscaping (including cutting of trees) hedges; mass plantings, poles; driveways; ponds; lakes, changes in grade or slope; site preparation; swimming pools; hot tubs; Jacuzzis; tennis courts; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs; exterior lights and illumination; and changes in any exterior color, design or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements, The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Architectural Control Committee, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Architectural Control Committee.

Section 9.5 Enforcement.

(a) The architectural control provisions of this Declaration and any Supplemental Declarations are to facilitate control of the architectural design, construction, installation and placement of all Improvements and landscaping and to establish quality standards for construction and construction activity in the Project and to help preserve values of properties in the Project. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Project and to Declarant, and to the values of their respective properties in the Project, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this **Article IX** and to enforce rulings and decisions of the Architectural Control Committee by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provision, ruling or decisions and/or through administrative action as permitted by the Act, including the possible imposition of fines or suspension of rights or privileges. Declarant hereby specifically reserves and grants unto, the Architectural Control Committee, the Board and any agent or member thereof the right of entry and inspection upon any portion of the Property for the purpose of determination by the Architectural Control Committee or the Board whether there exists any Improvement which is not approved or which violates the terms of any approval by the Architectural Control Committee, the of the Architectural and Landscape Guidelines, the terms of this Declaration or the Project Documents.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction or installation thereof (including without limitation, the demolition and removal of any unapproved Improvements) if such Improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of the Architectural and Landscape Guidelines, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the association and/or the Architectural Control Committee in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot or other portion of the Property upon which such Improvement was commenced or constructed.

Section 9.6 Failure of the Architectural Control Committee to Act. If the Architectural Control Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof and of the Architectural and Landscape Guidelines or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof, provided such submittal was a full and complete submittal in accordance with the Architectural and Landscape Guidelines, of all items that were to have been submitted to the Architectural Control Committee, and if the Architectural Control Committee shall again fail to approve or disapprove of such plans, specifications and other submittals within ten (10) business days after additional written request to act on such items is delivered to the Architectural Control Committee following the passage of such first above described thirty (30) business day period, it shall be conclusively presumed that the Architectural Control Committee has approved such conforming plans and specifications and other submittals EXCEPT that the Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory use restrictions or requirements specified in this Declaration or any Supplemental Declaration, and EXCEPT FURTHER, that the Architectural Control Committee shall not be deemed to have waived any of the requirements set forth in **Section 9.8, Section 9.9 or Section 9.10**. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them as being inadequate or may approve or disapprove them in part conditionally or unconditionally, and reject or approve the balance.

Section 9.7 Variances. Upon submission of a written request for same, the Architectural Control Committee may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with architectural or landscaping requirements or provisions that might be otherwise applicable. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved until the Architectural Control Committee has expressly approved the request in writing. No member of the Architectural Control Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Control Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Supplemental Declaration against any other Owner. **Nothing herein shall authorize the Committee to grant a variance with respect to the Use Restrictions set forth in Article XI or any Supplemental Declaration.**

Section 9.8 Fees Required by the Architectural Control Committee. The Architectural Control Committee, in its sole discretion, may require that each person submitting plans and specifications for Improvements to the Architectural Control Committee pay one or more fees to the Architectural Control Committee or to Declarant as a condition to review and/or to commencement of construction

of such Improvements including, without limitation, fees of professionals serving on or retained, employed or consulted by the Architectural Control Committee as provided in **Section 9.2(d)**. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established by, and may be increased from time to time by the Architectural Control Committee and may be set forth in the Architectural and Landscape Guidelines.

Section 9.9 Featured Builders.

(a) The Architectural Control Committee may require, in its sole discretion, that each person submitting plans and specifications to the Architectural Control Committee for the construction of Improvements also submit to the Architectural Control Committee a copy of a fully signed contract for the construction of such improvements between the Owner of the relevant Lot and a builder who is featured by the Board or the Architectural Control Committee, in their sole discretion (herein, a "Featured Builder; collectively, the "Featured Builders"), as a condition to the commencement of construction or installation of any such improvements.

The Architectural Control Committee shall provide a list of Featured Builders in accordance with the provisions of the Architectural and Landscape Guidelines. Persons and entities may be removed or added from time to time in the sole discretion of the Architectural Control Committee, acting on its own initiative or in response to a request from an Owner. To qualify as a Featured Builder, a builder must satisfy certain criteria and requirements established by the Architectural Control Committee and Declarant. The criteria and requirements established by the Architectural Control Committee and Declarant for a builder to qualify as a Featured Builder are solely for the Architectural Control Committee's and Declarant's protection and benefit and are not intended to, and shall not be construed to, benefit any Owner or any other party whatsoever. The Architectural Control Committee and Declarant make no representation, express or implied, to any Owner or any other party whatsoever with regard to the Featured Builders, including, without limitation, the existence, nature and extent (including coverage-amounts and deductibles) of insurance policies that may be maintained by the Featured Builders from time to time, the solvency or financial status of the Featured Builders from time to time, the nature and amount of any bonds that may be maintained by the Featured Builders from time to time, the performance (or the ability to perform) by the Featured Builders of the contractual obligations (including any contractual obligations of any of the Featured Builders in favor of any Owner or any other party whatsoever), the compliance by the Featured Builders with building codes and other requirements, rules, laws and ordinances of federal, state and local governmental quasi-governmental bodies and agencies relating to the construction of homes and other activities engaged in by the Featured Builders from time to time, the use of any substance or material, including, without limitation, any stucco or synthetic material by the Featured Builders in connection with the construction of homes, the compliance by any Featured Builder with any licensing requirements imposed by federal, state and local governmental and quasi-governmental bodies and agencies from time to time, including, without limitation, the maintenance of any required builder's and/or contractor's license, and the failure or alleged failure of any Featured Builder to comply with any industry standard or any other reasonable standard or practice with respect to such builder's work or materials used in the construction of houses and other activities engaged in by such Featured Builder at Hollyhock. Furthermore, neither the Architectural Control Committee nor Declarant, nor the officers, directors, members, employees, agents or affiliates of either of them, shall have any responsibility whatsoever for any sum that any Owner or any other party may deposit with a Featured Builder, including, without limitation, any earnest money or other deposit that any Owner may deliver to a Featured Builder. The selection of a Featured Builder by an Owner shall be conclusive evidence that such Owner is independently satisfied with regard to any and all concerns such Owner may have about the Featured Builder's work product and/or specifications. Owners shall not rely on the advice or representations of the Architectural Control Committee, Declarant or the officers, directors, members, employees, agents or affiliates of either of them in that regard.

Section 9.10 No Construction Without Payment of Fees and Signed Contract With Featured Builder. Notwithstanding anything contained in this **Article IX** to the contrary, plans and specifications for Improvements to be constructed on a Lot or other portion of the Property shall be not be deemed to have been properly submitted and construction or installation of improvements shall not commence unless and until any and all fees required by the Architectural Control Committee to be paid in connection with such Improvements, as provided in **Section 9.8**, shall have been paid to the Architectural Control Committee or Declarant as required. In addition such plans and specifications shall not be deemed to have been properly submitted and construction installation of Improvements shall not commence unless and until a copy of a fully signed contract between the Owner of the relevant Lot and a Featured Builder for construction of such improvements (if required by the Architectural Control Committee), as provided in **Section 9.9** above, shall have been submitted to the Architectural Control Committee.

Section 9.11 Notices and Submittals. Notices and Submittals to the Architectural Control Committee shall be in accordance with the notice provisions set forth from time to time in the Architectural and Landscape Guidelines.

Section 9.12 Separate Committee for Changes to Existing Improvements. The Board shall have the right, power and authority, in its sole discretion, to appoint a committee separate and apart from the Architectural Control Committee to review plans and specifications for any and all renovations, changes and additions to existing Improvements located on a Lot (herein the Architectural Changes Committee). Should the Board appoint such an Architectural Changes Committee, then the Architectural Control Committee shall relinquish to the Architectural Changes Committee its authority to review plans and specifications for any such changes to existing Improvements, and the Architectural Changes Committee shall be solely responsible for review and approval of the same. The composition of the Architectural

Changes Committee shall be determined by the Board in its sole discretion and the procedure for submission, review and approval of plans and specifications to and by the Architectural Changes Committee shall be set forth in the Architectural and Landscape Guidelines. Notwithstanding the foregoing, nothing herein shall be deemed to obligate the Board to appoint an Architectural Changes Committee, and until an Architectural Changes Committee is appointed, the Architectural Control Committee shall be responsible for reviewing and approving or disapproving all plans and specifications for renovations, changes and additions to existing Improvements in accordance with the provisions of this **Article IX** and the Architectural and Landscape Guidelines.

Section 9.13 Limitation of Liability. No member of the Architectural Control Committee or the Architectural Changes Committee shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article IX. Neither the Architectural Control Committee, nor the Architectural Changes Committee (if applicable), nor the members thereof; nor the Association, nor Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or connection with the approval or disapproval of, or the failure to approve or disapprove of any plans and specifications. The approval of plans and specifications by the Architectural Control Committee or the Architectural Changes Committee (if applicable) shall not be deemed or construed as a representation or warranty of the Architectural Control Committee or the Architectural Changes Committee (as the case may be), Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications; and any responsibility or liability therefor is hereby disclaimed. Every person who submits plans and specifications, and every Owner, agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Control Committee, the Architectural Changes Committee (if applicable), the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, waives, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law, which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration no other person, firm or entity, including, without limitation, any entity affiliated with the Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 9.14 Miscellaneous. Members of the Architectural Control Committee and, if applicable, the Architectural Changes Committee, in the sole discretion of the party or body appointing such members (i.e., either Declarant or the Board, as the case may be) may be compensated for their services. The Association shall reimburse members of the Architectural Control Committee and the Architectural Changes Committee (if applicable) for reasonable out-of-pocket expenses associated with their activities hereunder. All costs, expenses and attorneys' fees of the Architectural Control Committee and the Architectural Changes Committee (if applicable, including those incurred in connection with the exercise of their enforcement or other powers as provided herein, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, attorneys' fees and expenses in accordance with **Section 9.5**.

ARTICLE X EASEMENTS

Section 10.1 Use of Common Areas. Subject to any limitation or restriction set forth in this Declaration (including rules and regulations under **Section 11.27**), Declarant declares that the Common Areas are subject to a perpetual nonexclusive easement in favor of Declarant, the Association and their designees, the Owners and all their family members, guests, invitees and tenants; and appropriate governmental and quasi-governmental agencies to use the Common Area for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Declaration and any Supplemental Declaration. If ingress or egress to any Lot or other portion for the Property is through any Common Area, any conveyance or encumbrance of such area is subject to this easement.

Section 10.2 Right-of-Way Over Roadways. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns: and grants to the Association, its agents, employees, tenants, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, tenants, guests invitees successors and assigns, and to each Occupant of a Lot, and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Property while engaged in their

respective functions, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Roadways for the purpose of providing access, ingress and egress to and from, through and between the Property.

Section 10.3 Right of the Association and Declarant to Enter Upon the Common Areas. Declarant hereby reserves for the benefit of itself, its successors in interest and assigns, and grants to the Association and all agents, employees or other designees of Declarant or the Association an easement for ingress and egress and access to enter upon or over the Common Areas for the purposes of inspecting any construction, proposed construction, or improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Association, as appropriate. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter or re-designated or as Declarant otherwise determines them to be reasonably suited. Notwithstanding the foregoing, nothing contained herein shall be interpreted as imposing any obligation upon the Association or Declarant to maintain, repair, or construct Improvements which an Owner is required to maintain, construct or repair.

Section 10.4 Easement for Encroachments. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, the Owners, their successors and assigns, and to the Occupants of Lots, easements for encroachments, to the extent necessary, in the event any portion of the Improvements located on any portion of the Property now or hereafter encroaches upon any of the remaining portions of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching improvements in favor of Declarant, the Association, the Owners and all their designees.

Section 10.5 Entrance Monument, Landscape and Sidewalk Easements. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, its successors and assigns, the following nonexclusive perpetual easements over certain areas of the Property as hereinafter described for the purposes hereinafter described:

(a) Easements for the purposes of landscaping and maintaining entryways and erecting and maintaining entrance monument(s) for the Project, over, across and under those portions of the Property shown and designated as "Entry Easement" (or similar designation) on the Plats (herein referred to as the "Entrance Monument Easements"). Declarant and/or the Association shall have the right to landscape and maintain the areas of the Property so designated as entryways to the Project, to erect and maintain entrance monument(s) thereon bearing the name of the Project, and to erect and maintain lighting for such monument(s), plantings, landscaping, irrigation, systems and other improvements typically used for entryways.

(b) Easements for the installation, maintenance, repair and removal of landscaping and landscaping amenities, including signage, lighting, monuments and irrigation systems, over, across and under those portions of the Property shown and designated as "Landscape Easements" (or similar designation) on the Plats (herein referred to as "Landscape Easements").

(b) Easements for the installation, maintenance, repair and removal of sidewalks, over, across and under those portions of the Property shown and designated as "Sidewalk Easements" (or similar designation) on the Plat and if none are shown on the Plat, over the portion of the Property contained within any Roadway right of way or five (5) feet either side thereof.

Neither the reservation nor grant of these easements shall be deemed to compel or require Declarant or the Association to use any of the above easements for the purpose stated.

Section 10.6 Easements for Utilities and Drainage. Declarant, prior to the conveyance of the Common Area to the Association, and the Association, at any time thereafter, may grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair, and to replace water lines; pipes; ducts; sewer lines; and water lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; and wires over, under, along and on any portion of the Common Area. Utilities purposes shall include lighting, irrigation, drainage, storm water management and solid waste disposal services and purposes. Further, the Association may grant such permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful in the discretion for the Board for the purpose of maintenance and operation of the Project, Notwithstanding the foregoing, no sewer lines, electrical lines, water lines or other utilities may be installed or relocated on the Property except as initially approved by Declarant or thereafter approved by Declarant or the Board. Portions of the Property are subject to easements in favor of Duke Energy Corporation (or its affiliates) for electrical lines or other utilities as shown on one or more Plats.

Without limiting the generality of the foregoing, the Property shall be subject to all easements and rights-of-way for utilities and drainage shown on the Plats. Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Association, its successors and assigns.

Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, a non-exclusive easement and right of way over, under and along (a) a 10-foot strip of land adjacent to the front, side and rear boundary lines of all Lots within the Property and (b) all Landscape Easements, for the installation and maintenance of lines,

conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service, cable service, water, irrigation, sanitary sewer and drainage facilities, storm drainage and/or other utilities. Within the above described easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easements shall not prohibit the construction of driveways at locations approved by the Architectural Control Committee, over such easements.

Section 10.7 Declarant's Right to Assign Easements; Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Property, pursuant hereto, including any Improvements in such areas, which are not to be maintained by the Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot or other portion of the Property, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Declarant and/or the Association may exercise the rights reserved in this **Article X** for the purpose of enforcing the provisions of this **Section 10.7**. Notwithstanding the above, the Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Lot.

Section 10.8 Easement for Construction Purposes. Declarant shall have full rights of ingress and egress to and through, over and about the Property during such period of time as Declarant is engaged in any construction or improvement work on or within the Property, or on any other portion of the Entire Parcel. Declarant further have an easement for the purpose of the storage of materials, vehicles, tools, and equipment which are being utilized in such construction. No Owner, or his guests or invitees, shall in any way interfere or hamper Declarant, its employees, successors or assigns in connection with such construction. Declarant also reserves an easement over the Property, including all Lots, for purposes of satisfying and/or complying with any directions or requests of the North Carolina Department of Transportation with respect to any Roadway.

Section 10.9 Right of Access. Every Owner grants a right of access to his Lot to the independent manager and/or any other person authorized by the Board or the independent manager for the purpose of making inspection of or for the purpose of correcting any condition originating in his Lot and threatening another Lot or the Common Area, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Area, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Area in or adjoining his Lot; provided, however, such requests for entry (except in the case of emergencies where no request shall be required) are made in advance, and such entry is at a time reasonably convenient to the Owner.

Section 10.10 Reserved Easements for Declarant. Each deed from Declarant to the Association conveying all or any part of the Common Area shall be subject to a non-exclusive reserved easement, in favor of Declarant and any other Owner of all or any part of the Entire Parcel outside of the Property, for the purpose of pedestrian and vehicular access to and from all Roadways, for the use of the utility facilities (such as sewer and water mains and metering facilities) installed by Declarant in connection with its initial development of the Property; and for the installation, operation, repair and replacement of additional utility facilities. All such non-exclusive access and utility easements reserved by Declarant shall be subject to the terms and conditions set forth in **Section 3.1**. Such easements shall be appurtenant to the remainder of the Entire Parcel outside of the Property.

Section 10.11 Easements and Restrictions of Record. Without limiting the generality of the foregoing, the Property is subject to any valid and enforceable easements, restrictions and rights of way of record, including, without limitation, those recorded in ...

ARTICLE XI

USE RESTRICTIONS

Section 11.1 Residential Use Only. Each Owner shall use his Lot for residential purposes only, and shall not permit his Lot to be used in any unlawful manner. The maximum number of residents for any Lot shall be calculated by multiplying the number of bedrooms contained within the House times two. For purposes of this Section, a person shall be presumed to be a "resident" in the Lot if they occupy the Lot overnight for ten (10) consecutive days or for fourteen (14) days during any sixty (60) day period. Residency in any Lot may otherwise be established by the totality of the circumstances. To the extent permitted by law, any Owner may use his Lot as a home office, provided that such home office use (a) is ancillary to the residential use, (b) does not generate any additional pedestrian or vehicular traffic to or from his Lot or the Common Area, and (c) does not cause any disturbance of other Owners, residents or Occupants of the Property. In addition, Declarant shall have the right to use any portion of the Property as a sales office, construction office, storage area, model Lot, or similar facility in connection with its development of the Property until the Turnover Date.

Except those to be utilized by Declarant as described herein above, no structure shall be erected, placed, altered, used or permitted to remain on any Lot other than one single-family private House and one private garage for not less than two (2) vehicles and such other accessory structures as are approved in advance in writing by the Architectural Control Committee pursuant to the Guidelines. No Lot and no Improvements may be used for hotel or other transient residential purposes. Subject to the requirements set forth herein and in the Guidelines, fixed piers and floating boat dock facilities incidental to the residential use of Waterfront Lots are expressly permitted of Waterfront Lots upon the condition that they are not rented, leased or otherwise used for remuneration and fully comply with **Section 11.15** below. Furthermore, no boat (Including a houseboat), whether existing on a Lot, docked at a Pier or docked at a fixed pier or floating boat dock appurtenant to any Waterfront Lot in the Project, may at any time be used as a residence.

Section 11.2 House Size. The square footage requirements set forth below are for enclosed heated floor area, are measured from the ground level up (said ground level being the first level of any House as viewed from the Roadway fronting same) and are exclusive of the areas in heated or unheated basements, vaulted ceiling areas and attics, unheated porches of any type, attached or detached garages, porte-cocheres and unheated storage areas, decks and patios.

Any House erected upon any Lot shall contain not less than the following heated floor areas:

	Minimum Total Heated Area	Minimum Ground Floor Heated Area
1 Story	2,500	2,500
1 1/2 Story, split level, tri-level and others	2,500	1,800
2 Story, 2 1/2 Story	2,700	1,500

Notwithstanding the foregoing requirements, the Architectural Control Committee shall have the right (but not the obligation), because of restrictive topography, lot shape, dimensions or unusual site related conditions or other reasons, to allow variances from such minimum square footage requirements of up to ten percent (10%) of such minimum square footage requirements by granting a specific written variance.

No House erected upon a Lot shall contain more than two and one-half (2 1/2) stories above ground level (said ground level being the first level of any House as viewed from the Roadway fronting same). Notwithstanding the foregoing, the Architectural Control Committee shall have the right (but not the obligation), because of steep topography, unique Lot configuration or dimensions, unusual site related conditions or other similar reasons, to allow House heights greater than two and one-half (2 1/2) stories as viewed from rear and side elevations.

Section 11.3 Care and Maintenance. Each Owner shall (a) keep the interior of his House and Lot including, but not limited to, all appliances and utility systems, and the exterior of the House and Lot in a safe, neat and clean condition at all times; (b) permit no unsafe or unsanitary conditions in or on his House and Lot; (c) comply with any and all obligations imposed upon Owners by applicable building and housing codes; and (d) not deliberately or negligently destroy, deface, damage or remove any part of any House or Lot or the Common Areas, or knowingly permit any person to do so. If an Owner fails to comply with the standards or requirements of the Association relative to maintenance after written notice to do so, the Association shall have the right to undertake the necessary maintenance or repairs at the expense of the defaulting Owner, as provided in **Section 8.2**.

Section 11.4 HVAC Equipment. No air conditioning or heating equipment or apparatus shall be installed on the ground in front of, or attached to any front wall of any House on a Lot. Additionally, air conditioning and heating equipment and apparatus shall be screened from view from Roadways by landscape improvements, as more particularly provided in the Guidelines.

Section 11.5 Exterior Lighting. Exterior lighting on Lots shall be subject to the applicable requirements and limitations in the Guidelines. Night lighting of tennis courts and other recreational facilities on Lots is not permitted.

Section 11.6 Fences and Walls. In addition to the restrictions contained elsewhere in this Declaration and except as expressly provided below, no fence or wall (including densely planted hedges, rows or similar landscape barriers) (i) shall be erected, placed, maintained or altered on any Lot nearer to any Roadway fronting such Lot than the front building corner of the House constructed on such Lot (unless otherwise approved by the Architectural Control Committee) and (ii) shall not exceed six (6) feet in height, except fences enclosing approved tennis courts may be up to ten (10) feet in height if located at least twenty-five (25) feet from all Lot boundary lines. All fences and walls shall be maintained in a structurally sound and attractive manner. No fence or wall shall be erected on any Lot until the Architectural Control Committee has given its prior written approval of the color, size, design, materials and location for such fence or wall. Owners of Lots which abut Lake Access Areas shall not block, impede access or place or construct any fence or other natural or artificial barricade or impediment over all or any portion of such areas.

Section 11.7 Mail and Newspaper Boxes: House Numbers. The design, type, appearance and location of the mailbox/newspaper box on a Lot must be approved in writing by the Architectural Control Committee. House numbers may be displayed on the Dwelling Unit and/or mailbox only as approved by the Architectural Control Committee.

Section 11.8 Temporary Structures: Structure Materials. No residence or building of a temporary nature, including a construction trailer, shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic or canvas tent, barn, carport, garage, utility building, storage building or other metal, fiberglass, plastic or canvas, log home or modular home structure shall be erected on any Lot or attached to any building or structure. In addition, vinyl siding may not be used as a material on a House or other structure except as gables, dormers, eaves and fascia and as approved by the Architectural Control Committee. Provided, however, nothing herein shall prohibit Declarant or a Featured Builder (subject to the prior written approval of Declarant) from erecting or moving temporary buildings onto Lots owned by Declarant or such Featured Builder to be used for storage, or for construction or sales offices.

Section 11.9 Sight Line Limitations. To the extent that governmental requirements shall not impose a stricter standard, no fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above Roadways shall be placed or permitted to remain on any corner Lot within the triangular areas shown on the Plat as "Sight Triangles" (or similar designation). The same sight line limitations shall apply on any Lot within the triangular area formed by (i) the lines that runs from the point of intersection of (a) the edge of a Roadway's pavement (b) the edge of the pavement of the driveway on such Lot for a distance of ten (10) feet along such Roadway pavement away from such driveway pavement, (ii) the line that runs from said point of intersection for a distance of ten (10) feet along such driveway pavement away from such Roadway pavement, and (iii) the straight line that connects the ending points of the lines described in the foregoing clauses (i) and (ii). No tree shall be permitted to remain within such triangular areas unless the foliage line is maintained at an appropriate height to prevent obstruction of sight lines.

Section 11.10 Combination or Subdivision or Lots. Should the Owner of a Lot own an adjacent Lot(s) and desire that two (2) or more such Lots be considered as one Lot, then such Lots (except in connection with the payment of assessments and except as provided herein) be considered as one Lot for the purposes of this Article XI upon the recordation in the Office of the Register of Deeds of an instrument by such Owner expressing such intent. Such instrument shall refer specifically to this section in this Declaration and identify the Lots to be considered as one Lot for purposes of this Article XI and a -copy of such recorded instrument shall be promptly delivered by such Owner to the Architectural Control Committee. In each such case, building envelopes, setback lines, and easements reserved in this Declaration shall be adjusted accordingly by the Architectural Control Committee. The Owner of any Lot combines with a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. No Lot (including Lots created by previous combinations) shall be subdivided by sale, lease or otherwise without the prior written consent of Declarant or the Association if after the Turnover Date. Provided, however, Declarant reserves the right to combine, subdivide or change the size, boundaries (dimensions of any Lot or Lots owned by Declarant for any reason.

Section 11.11 Restricted Activities in Common Area and Other Areas. No cutting of vegetation, dumping, digging, filling, destruction or other waste shall be committed on the Common Area. No Owner shall pump or otherwise withdraw water from any pond located on the Property. There shall be no obstruction of the Common Area nor shall anything be kept or stored in the Common Area, nor shall anything be altered, or constructed or planted in, or removed from the Common Area, without the prior written consent of the Declarant and the Association. Each Owner shall be liable to the Association and/or Declarant for any damage to any Common Area caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, agents, employees, or invitees

Section 11.12 Recreational and Other Equipment.

- (a) No recreational equipment (including, but not limited to, basketball backboard and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) shall be attached to the exterior of any House or otherwise placed or kept on any Lot, except as approved by the Architectural Control Committee.
- (b) No recreational equipment shall be located in such a manner as to constitute a nuisance or unsightly condition to other Owners.
- (c) No recreational equipment shall be located within fifty (50) feet of the Lake.
- (d) Children's play toys and other moveable equipment or any type (such as lawn mowers, garden tools, etc.) shall not remain repeatedly overnight Within any front yard of any Lot, or within the side yards of any Lot located on a Roadway corner, in such number or for such a period of time as to create a continuing, unsightly condition.

Section 11.13 Parking and Storage.

- (a) No vehicles, trucks, vans, cars, trailers, or equipment of any type may be parked overnight on any Roadway within the Property.

(b) Commercial vehicles and trucks not involved with construction activity on the Property and having a carrying capacity and/or size designation greater than or equal to three-fourths (3/4) ton shall not be permitted to overnight on the Roadways, driveways or otherwise within the Property, unless stored in an enclosed garage. No vehicle of any size which transports inflammatory or explosive cargo may be kept within the Property at any time. No vehicles that are not in a condition to be normally operated or that do not have a current registration and inspection sticker can be stored or situated on any Lot for more than thirty (30) days unless stored in an enclosed garage.

(c) The-Owner of each Lot will be responsible for providing on such Owner's Lot a sufficient paved parking area for all vehicles normally parked and/or situated on or in regard to such Lot. No vehicle, trailer or equipment of any type may be parked or situated on a Lot other than on a paved driveway or parking area.

(d) No recreational vehicles or related equipment, including any boat, houseboat, trailer, motor home or "camper" vehicle may be maintained, stored or kept on any portion of the Property, except in enclosed garages or in an enclosure or common storage area specifically approved for such maintenance or storage by the Architectural Control Committee.

(e) Garage doors shall remain closed at all times except during times of ingress or egress.

(f) No construction office trailers may be placed, erected or allowed to remain on any Lots during construction, except as approved in writing by the Architectural Control Committee. Provided, however, nothing herein shall prohibit Declarant from creating or moving temporary buildings onto Lots owned by Declarant to be used as construction or sales offices; construction vehicles (trucks, vans, cars, construction equipment, equipment trailers, etc.) may be left overnight on the Property (including any Lot or Roadway) only in accordance with such rules as may be established by the Architectural Control Committee.

(g) The Association shall have the right to tow or remove any vehicle, trailer, or equipment of any type parked, stored, placed or kept in violation of this Section and charge the Owner with the cost thereof.

Section 11.14 Diligent Construction. All construction, landscaping other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed House or other Improvement shall be permitted to exist on any Lot except during such reasonable time period as is necessary for completion. All construction must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved by the Architectural Control Committee. Any damage to the Roadways, curbs or sidewalks or any part of the Common Area or any utility system caused by an Owner or Owner's builder or his subcontractors shall be repaired by such responsible Owner. Any builder of Improvements and his subcontractors on any portion of the Property shall keep such portion of the Property free of construction debris, in accordance with the construction rules established by the Architectural Control Committee or, in the absence of such rules, in accordance with standard construction practices, and shall similarly keep the Lake and contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's Property in the Project to pay for the cost of repairing any damage to Roadways, curbs, or sidewalks, or any part of any Roadway, Common Area, or utility system, to pay for the cost of cleaning public and private areas, including the Roadways in the Project, and to pay for the cost of the removal of garbage, trash or other debris, which are occasioned by the activities of an Owner or Owner's builder or his subcontractors during the construction of Improvements.

Section 11.15 Docks and Piers. The placement, construction, or use of any pier, dock, boat slip structure or other improvement within or upon the waters of the Lake, or similar disturbance of the shoreline buffer, is and shall be subject to each of the following:

(a) easements, restrictions, rules and regulations for construction and use promulgated by the Board and/or the Association;

(b) all laws, statutes, ordinances and regulations of all Federal, State and local governmental bodies having jurisdiction thereon, including without limitation the Federal Energy Regulatory Commission.

NO PIER, DOCK, BOATSLIP STRUCTURE OF OTHER SIMILAR IMPROVEMENT SHALL BE CONSTRUCTED BY WATERFRONT LOT OWNERS EXCEPT AS APPROVED BY THE ARCHITECTURAL CONTROL COMMITTEE. ALL WATERFRONT LOT OWNERS, BY PURCHASING PROPERTY SUBJECT TO THIS DECLARATION, ACKNOWLEDGE THAT THEY: SHALL BE RESPONSIBLE FOR OBTAINING (AND FOR CONDUCTING ALL REQUIRED ACTIVITIES, INCLUDING ANY DREDGING, NECESSARY IN CONNECTION WITH OBTAINING) ANY PERMIT, LICENSE OR LEASE ALLOWING FOR THE CONSTRUCTION AND USE OF ANY PIER, DOCK, BOATSLIP STRUCTURE OR OTHER SIMILAR IMPROVEMENT WITHIN OR UPON THE WATERS OF THE LAKE AND THAT SUCH PERMIT, LICENSE OR LEASE SHALL BE LIMITED IN DURATION AND NEITHER DECLARANT, NOR THE ASSOCIATION, NOR THE OFFICERS; DIRECTORS, MEMBERS, EMPLOYEES, AGENTS OR AFFILIATES OF EITHER OF THEM, SHALL HAVE ANY LIABILITY ARISING DIRECTLY OR INDIRECTLY OUT OF OR IN ANY WAY RELATED TO ANY SUCH PERMIT, LICENSE OR LEASE. ALL PIER, DOCKS OR SIMILAR IMPROVEMENTS CONSTRUCTED ON LAKE LOTS SHALL BE "FISH FRIENDLY."

Section 11.16 Marine Toilets. Unless an operational pump-out facility is located within the Project or nearby public access or unless otherwise expressly approved in writing by the Declarant no watercraft equipped with a Marine toilet having a fixed or portable holding tank, or a through hull or overboard discharge toilet, shall be permitted at any Waterfront Lot Owner's docks or piers.

Section 11.17 Boat Ramps. No boat ramps of any kind shall be permitted on any Lot, and no boat shall be Placed in (or removed from) the waters of the Lake from any Lot; provided, however, small watercraft such as canoes, dinghies, and jet skis may be launched from any Lot if launched without a ramp. All other watercraft shall be launched at a public boat ramp outside the Project. Finally, all boats shall be refueled and maintained at a public boat ramp outside the Project.

Section 11.18 Offensive Activity and Nuisance. No unlawful, noxious or offensive trade or activity shall be conducted upon any Lot, or in the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner, or which may endanger the health or safety of any other Owner.

Section 11.19 Noise and Disorderly Conduct. No Owner shall engage in any disorderly conduct on the Property, or cause or allow any disturbance, including, but not limited to, shouting, singing, or playing any musical instruments, radio, stereo, or television, in a manner that unreasonably disturbs any other Owner,

Section 11.20 Rubbish. All rubbish, trash, garbage, junk, and other waste shall be kept temporarily in sanitary containers within each Lot and removed at least weekly from the Property. All such trash containers or other equipment for storage or disposal of such waste shall be kept in a clean, odor free and sanitary condition and shall be located so as to be concealed from public view.

Section 11.21 Animals. No animals shall be kept or maintained in any Lot except for domesticated dogs, cats or other household pets. No pets may be kept bred for any commercial purposes, No savage or dangerous pets, as determined by the Board, in its sole discretion, may be kept on the Property. All permitted pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Property. All pets must be housed inside a Lot, and no pet shall be permitted upon the Common Area unless carried or leashed by a person that can control the pet. Pets shall not be permitted to defecate in the Common Area, or urinate on the shrubbery, and each Owner shall clean up immediately after his pet if an accident occurs. All pets shall be registered, licensed and inoculated as required by law. Each Owner shall indemnify and hold the Association harmless from any claim or Costs, including reasonable attorney's fees, resulting from any action of his pet and shall repair at his expense any damage to the Property caused by his pet. If any Owner violates these rules more than twice in any twelve (12) month period, the Association shall have the right to require the Owner to remove the pet permanently from the Property upon not less than ten (10) days written notice, which remedy shall be in addition to all other rights or remedies.

Section 11.22 Signs. No signs of any kind shall be placed or displayed in the public view on any Lot or on the Common Area. The provisions of this Section shall not prevent the placement of permanent signs identifying the Project at any entrance to the Project, nor shall it prevent Declarant or its agents or Featured Builders from placing signs to advertise the Property during the construction and sale period, including signs on the Common Area and on any Lot or Lot owned by the Declarant. Should any Owner violate the provisions of this Section and fail to cure such violation within ten (10) days after receiving written notice of such failure from the Association or Declarant (so long as it owns any portion of the Property), then the Association, acting through its authorized agent or agents, or Declarant, acting through its authorized agent or agents, either jointly or severally, shall have the power and right to enter onto the Lot of such Owner and remove any sign(s) which violate the provisions of this Section without any liability for damages for wrongful entry, trespass or otherwise to any person.

Section 11.23 Clotheslines. No clothesline or clothes drying structure or equipment of any type shall be placed, used or allowed to remain on any Lot.

Section 11.24 Leases. Any lease of a Lot or House thereon shall be in writing, shall provide that the lease and lessee of the Lot shall be subject in all respects to the Declaration, and that any failure by the tenant to comply with all of the terms of the Declaration shall constitute a default under the lease. No Lot may be leased for a period shorter than one hundred eighty (180) days.

Section 11.25 Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots. Each Owner shall comply with all laws, regulations, ordinances and other governmental rules and restrictions in regard to the Lot(s) or other portions of the Property owned by such Owner (including, without limitation, applicable zoning and watershed laws, rules, regulations and ordinances).

Section 11.26 Occupants Bound. All provisions of this Declaration, any Supplemental Declaration and the Bylaws and any and all rules and regulations, use restrictions or Architectural and Landscape Guidelines promulgated pursuant hereto or thereto which govern

the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

Section 11.27 Rules and Regulations. In addition to the restrictions set forth in this **Article XI** reasonable rules and regulations governing the use of the Property may be made and amended from time to time by the Board without further approval until the Class B Membership terminates. After the Class B Membership terminates, rules and regulations made by the Board and all amendments thereto shall not be effective unless and until they are approved by a majority vote of the Members at a duly called meeting. Copies of all such regulations and amendments thereto shall be published prior to their effective date and shall be furnished by the Association to Members upon request.

Section 11.28 Enforcement. The Association or its agent shall have the right to enforce the provisions of this **Article XI**, including Rules and Regulations adopted pursuant to **Section 11.27** in any manner, permitted by law including, without limitation, by seeking injunctive relief and/or the imposition of fines or other sanctions permitted by N.C.G.S. § 47F-3-102(12) and reasonable attorney's fees may be recovered as permitted by N. C.G.S. § 47F-3-120.

ARTICLE XII

AMENDMENT OF DECLARATION

Section 12.1 Amendment Generally. Except as is otherwise specifically authorized herein, this Declaration may be amended only as provided in N.C. G.S. § 47F-2-1 17. No amendment to the Declaration shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the Office of the Register of Deeds.

Section 12.2 Amendment of Declaration Without Approval of Owners. So long as it owns any portion of the Property, the Declarant, without the consent or approval of any other Owner, shall have the right to amend this Declaration:

- (a) to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property;
- (b) to qualify the Property or any Lots and Improvements thereon for mortgage or improvement loans; or
- (c) to make amendments which are correctional in nature only and do not involve a change which materially and adversely affects the rights, duties or obligations herein.

A letter from an official of any such governmental Agency, including, without limitation, the Veterans Administration, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such agency shall be sufficient evidence of the approval of such agency, provided that the changes made substantially conform to such request or suggestion. Such amendment shall become effective upon the date of its recordation in the Office of the Register of Deeds.

Section 12.3 Amendment to Achieve Tax-Exempt Status. The Declarant, for so long as it is a Class B Member of the Association and, thereafter, the Board, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Office of the Register of Deeds.

Section 12.4 Changes to Plans for the Project. Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the development of the Project, and Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Supplemental Declaration, reserves the right to change any plans for the Project at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions. Any plans for the Project shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof. In addition, Declarant reserves the right to change, from time to time, the uses and densities that exist on any portion(s) of the Property owned by Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Supplemental Declaration.

ARTICLE XIII

TERMINATION, DURATION, CONDEMNATION

Section 13.1 Termination. This Declaration may be terminated only as set forth in N.C.G.S. § 47F-2-118.

Section 13.2 Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein shall run with and bind the Property and any Owner, and shall inure the benefit of every Owner of a Lot in the Property and every Owner of any other portion of the Property, including Declarant, and their respective heirs, successors, and assigns, **for a term of thirty (30) years** beginning on the date this Declaration is recorded in the Office of the Register of Deeds of _____ County, North Carolina. At the end of such thirty (30) year period, the easements, covenants, conditions and restrictions set forth herein shall automatically be extended for successive period(s) of ten (10) additional years, unless prior to the expiration of a respective period, two thirds (2/3) of the Members execute and record an instrument terminating these covenants and restrictions. The foregoing shall not limit the right of Declarant to amend and/or supersede, in whole or in part, the terms and provisions hereof, as such right in favor of Declarant is described in this Declaration.

Section 13.3 Condemnation. Whenever all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for and on account of such taking shall be paid to the Association. The Association, acting through the Board, shall have the right to negotiate and litigate the issues with respect to the taking and compensation affecting the Common Area, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot or other portion of the Property, hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Area. All compensation and damages paid to the Association on account of such a taking shall be used to restore the Common Area, provided such restoration is possible, with the excess, if any, to be retained by the Association and applied to future operating expenses the Board, in its sole discretion. Nothing herein is to prevent Owners whose Lots or other property are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to less of value of the affected Lots, or other property, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Common Area, Lots or other property without such allocation, the award shall be divided between affected Owners and the Association by the Board in its sole discretion.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 14.1 Covenants Running with the Land. Each Owner, by the acceptance of a deed of conveyance for a Lot, accepts title to that Lot and Lot subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed, shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance,

Section 14.2 Construction and Enforcement: Mediation and Arbitration. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating, preserving and maintaining the development and operation of a residential community of the highest quality. Declarant, Association and Owner of any Lot, by acceptance of a deed therefor is deemed to covenant and agree that, at the election of any other party, **any controversy, claim or dispute arising out of or relating to the Project, the Association or any provision of the Project Documents, or any breach or violation thereof, shall be resolved through mediation or binding arbitration** which may be demanded by any interested party and shall be conducted in accordance with the following:

- (a) The place of the arbitration shall be _____,
- (b) There shall be one (1) arbitrator. The parties shall attempt to agree upon one arbitrator, If they are unable to agree, the arbitrator shall be appointed-as provided in N.C.G.S § 1-567.4.
- (c) Any party to an arbitration proceeding commenced hereunder may, by written request, require all parties to participate in non-binding mediation by service of a written request on all parties within ninety (90) days after arbitration is demanded, Upon service of the mediation request, all parties shall act in good faith and cooperate to select a single mediator and to schedule mediation which shall be held within forty-five (45) days after the mediation is requested. The arbitration shall be held in abeyance until mediation is concluded by the declaration of an impasse except that the arbitrator may rule upon any questions regarding the mediation process not specifically provided for herein.

(d) The expenses of the arbitration and any mediation shall be divided equally between the parties, provided, however, that the arbitrator may award attorney's fees as permitted under N.C.G.S. § 47F-3-120.

(e) The arbitrator shall pass finally on all questions, both of law and fact, and the arbitrator's findings and awards shall be conclusive.

(f) Pre-hearing discovery shall be available to all parties and shall be governed by the North Carolina Rules of Civil Procedure. Such discovery may be used as evidence in the arbitration hearing to the same extent as if it were a court proceeding. Information obtained by any party during the course of discovery shall be kept confidential and shall not be disclosed to any third party, shall not be used except in connection with the arbitration proceeding and at the conclusion of the proceeding, shall be returned to the other party.

(g) All parties shall make themselves, their agents and employees available upon reasonable notice, at reasonable times and places, for pre-hearing depositions without the necessity of subpoenas or other court orders. The arbitrator shall issue subpoenas to compel the attendance of, and the production of documents by, third party witnesses at depositions or at the hearing.

(h) The arbitrator's award may include equitable or legal relief as the arbitrator deems appropriate. Enforcement of the arbitration award may be ordered by any court of competent jurisdiction. All parties expressly and irrevocably consent to the jurisdiction of the North Carolina courts for the confirmation or enforcement of any arbitration order of award, whether preliminary or final, or for any litigation which may arise out of or be related to the Association, the Project or the Project Documents.

(i) Except as otherwise set forth herein, the arbitration shall be conducted pursuant to the Uniform Arbitration Act (N.C.G.S. § 1-567.1, et seq).

(j) Notwithstanding the foregoing, the following proceedings shall be excluded from the requirement of arbitration:

(1) Association administrative proceedings including Hearings regarding Fines and Suspension of Services under N.C.G.S. § 47F-3 102(11) or (12) and N.C.G.S. § 47F-3-107.1. The Association may conduct any administrative proceedings permitted or provided for under the Project Documents, the Act or as otherwise provided by law, including without limitation, the right of the Association, after notice and an opportunity to be heard, to (1) impose reasonable fines for violations of the Declaration, Bylaws, rules and regulations of the Association, or (2) to suspend privileges or services provided by the Association (except rights of access to lots) for reasonable periods for violation of the Declaration, Bylaws, and rules and regulations of the Association 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. Prior to pursuing the imposition of a fine or the suspension of privileges or services as allowed by the Act and provided herein, the offending Owner will be notified and given ten (10) days in which to cure his violation or nonpayment. In the event the violation or nonpayment is not cured within this ten (10) day period, a hearing shall be held before an adjudicatory panel appointed by the Board to determine if the offending owner should be fined or if privileges or services should be suspended. If the Board fails to appoint an adjudicatory panel to hear such matters, hearings shall be held before the Board. The offending Owner charged shall be given notice of the charge, in 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; provided, however, that fines imposed shall be subject to the following minimums:

- i) The fine for the first violation or the first day of any continuing or repetitive violation shall not be less than \$25.00;
- (ii) The fine for the second violation or the second day of any continuing or repetitive violation shall not be less than \$50.00;
- (iii) The fine for the third violation or the third day and subsequent days of any continuing or repetitive violation shall not be less than \$100.00.

Fines imposed shall be assessments secured by liens under N.C.G.S. § 47F-3-116. If it is decided that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the delinquency is paid if imposed pursuant § 47F-3-102(11) or until one violation is cured or for sixty (60) days, whichever is longer, if imposed pursuant to § 47F-3-102(12).

(2) Association Collections. The Association may institute actions or proceedings permitted by law or the Act to collect any sums due and owing to it.

(3) Abatement of Violations. In the event of any violation of the Declaration, Bylaws or rules and regulations of the Association, the Association or its designated agents, may upon reasonable notice to the Owner (or without if the violation creates an immediate threat to the health, safety, or welfare of any resident of the Property) enter upon the Lot where such violation exists and abate or remove the same at the expense of the Owner, provided, however, that the Association shall then, at the expense of the Owner, make the necessary repairs or construction to ensure that the property and improvements where such violation occurred

are restored to the same condition in which they existed prior to such violation, and any such entry, abatement, removal or restoration and construction work shall not be deemed a trespass. Any amounts expended by the Association in so removing or abating any such violation and in restoring or repairing said property shall immediately be deemed a Special Individual Assessment levied by the Association against such violating Owner and such Owner's Lot, shall become a personal obligation of such Owner and shall become a lien upon such Lot enforceable as under the provisions of **Section 5.7**. Notwithstanding the foregoing, the Association shall not have the right to exercise the foregoing powers without an order from an arbitrator or a court of competent jurisdiction if the abatement sought by the Association involves the alteration or demolition of any improvements within the Property.

Section 14.3 Waiver. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur. There shall be no waiver of strict compliance with the provisions of the Project Documents except expressly and in a writing signed by the waiving party.

Section 14.4 Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of the Declaration.

Section 14.5 Time Limits. If any of the privileges, covenants, restrictions or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until the expiration of ninety (90) years from the date of recordation of this Declaration.

Section 14.6 No Liability. Neither Declarant, nor any subsidiary of Declarant, nor any employee, agent, successor or assign of Declarant or any such subsidiary, shall be liable for any claim or damage whatsoever arising out of any actions performed pursuant to or in accordance with any authority granted or delegated to them by this Declaration.

Section 14.7 Headings. The heading to each Article and Section of this Declaration is inserted only as a matter of convenience for reference and in no way limits the scope or intent of such Article or Section, or this Declaration in general.

Section 14.8 Recovery of Attorney's Fees. Reasonable attorney's fees may be recovered as permitted under N.C.G.S. § 47F-3-120 only with respect to actions or proceedings which relate to the provisions of **Articles IX and XI**, (or the similar architectural control or use restriction provisions contained in any Supplemental Declaration) or as otherwise expressly provided for in this Declaration or any Supplemental Declaration.

IN WITNESS WHEREOF [STANDARD SIGNATURE BLOCK AND NOTARIAL SEAL]

EXHIBITS MAY FOLLOW - LEGAL DESCRIPTION OF ENTIRE PARCEL, etc.