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**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE TOWNES AT LAKESHORE HARBOUR**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE  
UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA. THIS DOCUMENT  
REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.**

**Prepared By and Return To: Richard A. Galt, Esq.**

**AMENDED AND RESTATED DECLARATION  
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FOR  
THE TOWNES AT LAKESHORE HARBOUR**

This **AMENDED AND RESTATED DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS FOR THE TOWNES AT LAKESHORE HARBOUR** is made on the date hereinafter set forth by **LAKESHORE HARBOR LLC** ("Lakeshore"), a North Carolina limited liability company having an office in Cumberland County, North Carolina, and **LUXURY CONDOS LLC** ("Luxury"), a North Carolina limited liability company having an office in Cumberland County, North Carolina, and amends and restates that certain Amended And Restated Declaration Of Covenants Conditions And Restrictions For The Townes At Lakeshore Harbour recorded in Book 9815, Page 254, Cumberland County, North Carolina Registry.

**WITNESSETH:**

WHEREAS, Lakeshore is the owner of certain property in the County of Cumberland, State of North Carolina, which is more particularly described as follows:

**BEING a portion of Lot 2A as shown on the plat entitled "SUBDIVISION SURVEY OF THE TOWNES AT LAKESHORE HARBOUR BUILDING 2 & 3" duly recorded in Plat Book 137, Page 189, Cumberland County, North Carolina Registry.**

WHEREAS, Luxury is the owner of certain property in the County of Cumberland, State of North Carolina, which is more particularly described as follows:

**BEING all of Building 2, containing Units 417, 419 and 421, all of Building 3, containing Units 425, 427, 429 and 431, and a portion of Lot 2A as shown on the plat entitled "SUBDIVISION SURVEY OF THE TOWNES AT LAKESHORE HARBOUR BUILDING 2 & 3" duly recorded in Plat Book 137, Page 189, Cumberland County, North Carolina Registry.**

WHEREAS, it is the intent of the Declarant hereby to cause the above-described property to be subjected to this Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, such real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

SECTION 1. "Additional Property" shall mean any property located adjacent to the Properties. For the purpose of determining whether property is adjacent to the Properties, the rights of way of public roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise adjacent property.

SECTION 2. "Affiliate" shall mean: (i) any corporation at least fifty percent (50%) of the voting stock of which is owned or controlled by the Declarant, and any partnership, joint venture or limited liability company in which the Declarant has at least a fifty percent (50%) equity interest or an interest in at least fifty percent (50%) of the cash flow from such partnership, joint venture or company; or (ii) any person or entity owning or controlling at least a fifty percent (50%) equity interest in Declarant or an interest in at least fifty percent (50%) of the cash flow from Declarant.

SECTION 3. "Appropriate Local Governmental Authority" shall mean and refer to the City of Fayetteville, Cumberland County or other appropriate local governmental authority having jurisdiction over the Properties.

SECTION 4. "Association" shall mean and refer to The Townes at Lakeshore Harbour Homeowners Association, Inc., its successors and assigns, said Association, if not now in existence, to be formed prior to the conveyance of any Lot by Declarant.

SECTION 5. "Common Elements" or "Common Area" shall mean all real property owned by the Association (whether owned in fee or by way of license or easement) or leased by the Association, other than a Lot. Presently, the Common Elements to be owned by the Association shall consist only of the easements herein established in favor of the Association.

Declarant reserves the right, in its sole discretion, to convey or cause to be conveyed to the Association from time to time and without the consent of the Association or its Members, additional property to the Association, which property may include any portion of the Properties, including any Additional Property annexed by Declarant pursuant to Article XI, Section 4 hereof. The Association shall accept any such conveyance of property and thereafter such property shall be held and maintained by the Association as Common Elements. Improvements, which may include, but shall not be limited to, roadways, sidewalks, landscaped areas, retention or detention ponds or erosion control devices, may be located on such additional Common Elements. Except as otherwise provided in Section 47F-3-113 of the Planned Community Act, the Association shall be required to promptly repair and replace any Common Elements that are damaged or destroyed.

Although Declarant does not contemplate the construction of any recreational improvements or amenities (i.e., swimming pool, tennis courts, clubhouse, etc.) on Common Elements to be owned in fee by the Association, Declarant expressly reserves the right, during Declarant's Development Period, to establish in favor of the Association and its Members a right of easement and license allowing the Owners of Lots to use fitness and related facilities located or to be located on nearby property. Any such easement and license shall provide that the Association shall be required to contribute to the maintenance of such facility. The Association shall accept any such easement and license as a part of the Common Elements and all fees and costs associated therewith shall be a Common Expense of the Association.

The Association also may acquire additional real property and identify such property as Common Elements with the consent of the Members of the Association entitled to cast at least two-thirds (2/3) of the votes of each class of Members of the Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during Declarant's Development Period no such action shall be effective without Declarant's consent and approval. For such a conveyance to be effective, the deed or instrument conveying to the Association additional Common Elements must: (1)

be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the instrument on behalf of the Association that the requisite owner and Declarant approval has been obtained and is evidenced by written acknowledgments signed by the owners approving the amendment and if required, Declarant, and that such acknowledgments are made a part of the minute book of the Association; and (3) be properly recorded in the Cumberland County Registry.

SECTION 6. "Declarant" shall mean and refer to Lakeshore Harbor, LLC, as well as its successors and assigns, pursuant to an express assignment or conveyance of any special declarant rights hereunder to such successor or assign, all of which rights, including Declarant's voting, architectural review, easement and development rights, shall be assignable and may be apportioned on a lot-by-lot basis.

SECTION 7. "Declarant's Development Period" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, Cumberland County, North Carolina, and continuing until the later of: (i) one year after Declarant or any Affiliate shall cease to own any portion of the Properties; or (ii) the expiration of Declarant's right to annex any portion of the Additional Property pursuant to the provisions of Article XI, Section 4 hereof.

SECTION 8. "Limited Common Elements" shall mean a portion of the Common Elements allocated by the declaration or by operation of law for the exclusive use of one or more but fewer than all of the Lots, and includes the Limited Common Area (LCA) as the same are shown on the Plat. Any part of the Limited Common Elements exclusively serving a Lot is a Limited Common Element to be allocated exclusively to that Lot.

SECTION 9. "Lot" shall mean and refer to any separately numbered portion of the Properties shown on any now or subsequently recorded subdivision plat of the Properties intended for use or used as a site for a townhome and shall include any improvements constructed thereon and "Lots" shall refer to all such lots collectively. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of any other Owner or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or an Affiliate, as the case may be, and to thereby create additional Lots, eliminate existing Lots or create additional Common Elements; provided, however, in no event shall the Properties contain a greater number of Lots than the number from time to time permitted by the Appropriate Local Governmental Authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

SECTION 10. "Master Plan" shall mean and refer to the plan(s) for the Properties and the Additional Property now or hereafter approved by the Appropriate Local Governmental Authority, as such plan(s) may be from time to time amended and approved.

SECTION 11. "Master Plan Lot" shall mean and refer to any separately numbered portion of the properties shown from time to time on the Master Plan intended for use or used as a site for a townhome and shall include any improvements constructed thereon and "Master Plan Lots" shall refer to all such lots collectively.

SECTION 12. "Member" shall mean and refer to every person or entity that holds Membership with voting rights in the Association.

SECTION 13. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 14. "Period of Declarant Control" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Cumberland County Registry, and continuing until the earlier of: (i) twenty (20) years from the date this Declaration is recorded in the Cumberland County Registry; or (ii) such time as Declarant, together with all Affiliates shall cease to own and/or have the contract right to purchase at least twenty-five percent (25%) of the Master Plan Lots; provided, however, if after the expiration of such period of time, the Master Plan is amended to add additional Master Plan Lots and Declarant, together with all Affiliates, shall own and/or have a contract right to purchase more than twenty-five percent (25%) of the Master Plan Lots shown on the Master Plan as amended, such period of time shall be reinstated and shall continue until the earlier of (i) twenty (20) years from the date this instrument is recorded in the Cumberland County Registry; or (ii) such time as Declarant, together with all Affiliates shall cease to own and/or have the contract right to purchase at least twenty-five percent (25%) of the Master Plan Lots.

SECTION 15. "Planned Community Act" shall mean and refer to the provisions of Chapter 47F of the General Statutes of North Carolina.

SECTION 16. "Plat" shall mean the plat entitled "SUBDIVISION SURVEY OF THE TOWNES AT LAKESHORE HARBOUR BUILDING 2 & 3" duly recorded in Plat Book 137, Page 80, Cumberland County, North Carolina Registry.

SECTION 17. "Properties" shall mean and refer to all of the property hereby or hereafter made subject to the terms, covenants and conditions of this Declaration, as amended from time to time.

## **ARTICLE II PROPERTY RIGHTS**

SECTION 1. RULES AND REGULATIONS. The Executive Board of the Association may establish reasonable rules and regulations concerning the use of the Common Elements and the Lots, and improvements located thereon. The Association may impose reasonable monetary fines and other sanctions for the violation of established rules and regulations and for the violation of any of the covenants and conditions contained in this Declaration, which monetary fines and sanctions shall be assessed and collected pursuant to the provisions of Articles IV and XI hereof. Copies of such rules and regulations and the amendments thereto shall be furnished by the Association to all owners prior to the effective date thereof. All such rules and regulations shall be binding upon the owners, their families, tenants, guests, invitees and agents until and unless such regulation, rule or requirement shall be specifically overruled, canceled, or modified by the Executive Board of the Association or by the Members of the Association entitled to cast at least two-thirds (2/3) of the votes of the Association; provided, however, during any Period of Declarant Control, Declarant must also consent to such action.

SECTION 2. OWNERS EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Elements, including, without limitation, an easement for access, ingress and egress from and to public streets and walkways over those portions of the Common Elements intended for such purpose, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the easements herein reserved by Declarant or created in favor of the Association and its Members, including, without limitation the easements set forth in Article VIII hereof;

(b) the right of the Association to suspend the voting rights by the Owner(s) of any Lot for any period during which any assessment against such Lot remains unpaid and for any period during which such Lot or any Owner or occupant thereof is in violation of the terms of this Declaration or the published rules and regulations of the Association and for a period not to exceed sixty (60) days after any such violation;

(c) the right of the Association to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Association's Executive Board; provided, however, no such dedication or transfer shall interfere with or obstruct drainage rights in favor of, utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances and no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded;

(d) the right of the Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes of each class of Members of the Association, to dedicate or transfer fee title to all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances;

(e) the right of the Association to impose rules and regulations for the use and enjoyment of the Common Elements and the Lots, and improvements thereon, which regulations may further restrict the use of the Common Elements, and specifically including the right to establish rules and regulations concerning pet ownership, which rules and regulations may further limit the number, size or type of pets that are permitted;

(f) the right of the Association to borrow money for the purpose of improving the Common Elements and facilities thereon and, with the assent of the Members entitled to cast at least eighty percent (80%) of the votes of each class of Members of the Association, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association); provided, however, during Declarant's Development Period, Declarant must also consent to such action, and further provided that no such mortgage, encumbrance or hypothecation or foreclosure of the lien thereby created shall interfere with or obstruct drainage rights in favor of, utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or

any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances; and

(h) the right of the Association to convey to Declarant or any Affiliate portions of the Common Elements for the purpose of correcting erroneous conveyances of Common Elements or eliminating unintentional encroachments of dwellings or other improvements onto portions of the Common Elements or for the purpose of enhancing the utility of the Common Elements to be retained by the Association; provided, however, no such conveyance shall interfere with or obstruct drainage rights in favor of, utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances.

(g) the terms of any agreement or instrument pursuant to which the Common Elements are established or conveyed to the Association.

Notwithstanding the foregoing, each of the Limited Common Elements shown on the Plat is for the exclusive use of the Lot served by such Limited Common Element.

**SECTION 3. ASSOCIATION'S EASEMENT AND RIGHT OF ENTRY.** The Association, for itself and its employees, agents, contractors, subcontractors and invitees, shall have a perpetual access easement over each Lot to the extent reasonably necessary to perform the maintenance to be performed by the Association.

**SECTION 4. DELEGATION OF USE.** Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common Elements and facilities to the members of his family, his tenants or contract purchasers who reside on the Lot of such Owner.

**SECTION 5. LEASES OF LOTS.** Any Lease Agreement between an Owner and a lessee for the lease of such Owner's Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association and all rules and regulations promulgated by the Association pursuant to this Declaration, that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease. All leases of Lots shall be in writing and shall have a term of not less than one (1) month. Other than the foregoing there is no restriction on the right of any Owner to lease his Lot.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

**SECTION 1. MEMBERSHIP.** Every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including Declarant and any Affiliates, shall be a voting Member of the Association. The foregoing is not intended to include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation. Such Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment by the Association. Except as otherwise provided in Section 2 below, on all matters which the Membership shall be entitled to vote, the Member(s) owning each Lot shall be entitled to one (1) vote. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

**SECTION 2. CLASSES OF MEMBERSHIP.** The Association shall have two classes of voting membership:

**Class A:** The Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except for Declarant or any Affiliate, during any Period of Declarant Control. Class A Members shall be entitled to one (1) vote for each Lot owned.

**Class B:** Declarant shall be the Class B Member and Declarant shall be entitled to twenty (20) votes for each Master Plan Lot that is owned by Declarant and/or any Affiliate or for which Declarant or any Affiliate holds a contract right to purchase. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) when Declarant ceases to own any Lot; however, the Class B membership shall be reinstated if thereafter, and before the time stated in subsection (iii) below, additional property is annexed to the Properties pursuant to the terms of this Declaration and following such annexation Declarant owns a number of Lots sufficient to allow the Class B membership to continue under subsection (ii) below;

(ii) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; however, the Class B membership shall be reinstated if thereafter, and before the time stated in subsection (iii) below, the Master Plan is amended to add additional Master Plan Lots sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to twenty (20) votes for each Master Plan Lot that is owned by Declarant and/or any Affiliate or for which Declarant or any Affiliate holds a contract right to purchase) greater than those of the Class A membership; or,

(iii) twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds, Cumberland County, North Carolina.

**SECTION 3. DECLARANT RIGHT TO REPRESENTATION ON THE EXECUTIVE BOARD OF THE ASSOCIATION.** During any Period of Declarant Control, Declarant shall have the right to designate and select all of the Members of each Executive Board of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Executive Board of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Executive Board and to replace such person or persons with another person or other persons to act and serve in the place of any member or members of the Executive Board so removed for the remainder of the unexpired term of any member or members of the Executive Board so removed. Any Executive Board member designated and selected by Declarant need not be a resident of the Properties. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Executive Board which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

**ARTICLE IV  
COVENANT FOR MAINTENANCE AND ASSESSMENTS**

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay: (a) to the Association: (i) annual and other assessments and charges provided for herein, together with interest, and late fees, costs and reasonable attorneys fees; (ii) special assessments and limited common assessments, such assessments to be established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of any ad valorem taxes levied against the Common Elements; and (ii) a pro rata share of any assessments for public improvements to or for the benefit of the Common Elements, if the Association shall default in the payment of either or both for a period of six (6) months. All assessments and charges provided for herein, together with interest, and late fees, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made in favor of the Association (or the taxing authority, as applicable) when a claim of lien is filed of record in the Office of the Clerk of Superior Court, Cumberland County, North Carolina. Each such assessment and charge, together with interest, any late fees, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

SECTION 2. PURPOSE OF ASSESSMENTS.

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements or the Lots, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of any taxes assessed against the Common Elements; the maintenance of any open spaces and streets within the Common Elements which have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in any dedicated rights-of-way within the Properties), drives within the Common Elements; the procurement and maintenance of insurance in accordance with the By-Laws and this Declaration; the maintenance of stormwater drainage facilities, dams and ponds, including retention or detention ponds, or other, if any, located within the Common Elements or otherwise serving the Properties; fees associated with any right now or hereafter established pursuant to Article I, Section 5 hereof allowing Owners to use offsite amenities and related facilities; the costs of maintaining, repairing and restoring the Lots in accordance with the terms of this Declaration and any other portions of the Properties that the Association is obligated hereby or otherwise to maintain; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Elements; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves in accordance with subsection (b) below; and such other needs as may arise.

(b) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Elements and those other portions of the Properties that the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for Common Expense.

(c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of the Association in the performance or exercise of any right, duty or obligation provided for in this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and Common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his Membership interest therein, except as an appurtenance to his Lot. When any Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Properties.

**SECTION 3. ADOPTION OF BUDGET AND FIXING OF ANNUAL ASSESSMENTS AND LICENSE FEES; MAXIMUM RATE OF ANNUAL ASSESSMENTS.**

(a) At least ninety (90) days in advance of each annual assessment period, the Executive Board shall establish an annual budget and fix the amount of the annual assessments, and the license fees to be paid in connection with that certain License Agreement For Lakeshore Harbour Amenities recorded in Book 9815, Page 284, Cumberland County, North Carolina Registry, in advance for the following year. The Executive Board shall determine the amount of annual assessments and license fees to be levied against each Lot by dividing the annual Common Expense liability of the Association as reflected in the budget by the number of Lots to be assessed pursuant to the terms hereof.

(b) Within thirty (30) days of the adoption of any proposed budget, the Executive Board shall provide to all of the Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Executive Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. If the budget provides for a rate of annual assessment (exclusive of license fees) that is not in excess of any applicable maximum rate of annual assessment, the budget is deemed ratified unless at that meeting the Owners of at least eighty percent (80%) of the Lots reject the budget. If the budget provides for a rate of annual assessment (exclusive of license fees) that is in excess of any applicable maximum rate of annual assessment, the budget is deemed ratified unless at that meeting the Owners of at least a majority of the Lots reject the budget. If a proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

(c) Until December 31, 2016, the amount of the maximum rate of annual assessment to be levied against each Lot shall be \$115.00 per month for each Lot (which amount is exclusive of license fees). The maximum rate of annual assessment (exclusive of license fees) for the calendar year 2017 and for each calendar year thereafter may be increased by the Executive Board effective January 1 of each year without a vote of the Owners, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the annual assessments (exclusive of license fees) for the previous year, unless such increase is approved as set forth in Section 3(b), above.

SECTION 4. SPECIAL ASSESSMENTS. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of funding any budget shortfall or funding any extraordinary or nonrecurring expense of the Association, provided that any such assessment shall have the assent of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose; provided, however, during the Declarant's Development Period, Declarant must also consent to such action. All special assessments shall be fixed at an equal rate for all Lots and, in the discretion of the Executive Board, may be collected on an annual, semiannual, or monthly basis.

SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action requiring Member approval under Section 3(b) or 4 of this Article shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of Members of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6. RATE OF ANNUAL ASSESSMENT. Both annual and special assessments must be fixed at an equal rate for all Lots and may be collected on a monthly, quarterly or annual basis.

SECTION 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES. The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the date such Lot is conveyed by Declarant or an Affiliate to an Owner other than Declarant or Affiliate. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due dates shall be established by the Executive Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

SECTION 8. WORKING CAPITAL ASSESSMENTS. In addition to the annual assessments authorized above, at the time of the closing of the first sale of each Lot to a purchaser other than Declarant or an Affiliate, the purchaser(s) thereof shall pay to the Association an amount equal to two-twelfths (2/12ths) of the then current annual assessment established by the Association. Such funds shall be used by the Association to establish a Working Capital Fund, the purpose of which is to help insure that the Association will have sufficient monies available to meet its initial operational needs, unforeseen expenditures or longterm capital improvements and repairs to the Common Elements. No such payments made into the Working Capital Fund shall be considered advance or current payment of

regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of the Declaration and these Bylaws.

SECTION 9. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate from time-to-time established by the Association not to exceed eighteen percent (18%) per annum. In addition, the Association may charge a reasonable late fee, the amount of which shall be established from time to time by the Executive Board of the Association, for assessments not paid within thirty (30) days after the due date and after notice and an opportunity to be heard, the Association may suspend privileges or services provided by the Association (except rights of access to Lots during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer, which suspension may continue without further hearing until the delinquency is cured. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of a mortgage or deed of trust on real estate under power of sale, and interest, any late fees, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be assessed exclusively against such Lot and the assessment shall be the personal obligation of such Lot Owner and a lien against such Lot as provided in Article IV of this Declaration. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Elements or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

SECTION 10. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Elements or assessments for public improvements to the Common Elements, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

SECTION 11. SUBORDINATION OF THE LIEN FOR ASSESSMENTS TO THE LIEN OF FIRST MORTGAGES. When the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust or deed in lieu of foreclosure, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such Lot which become due prior to the acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be Common Expense collectible from all Owners including such purchaser, its heirs, successors, and assigns. Such sale or transfer of any Lot which is subject to any such first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer; provided, however, no such sale or transfer shall relieve such Lot or the Owner thereof from liability for any assessments thereafter becoming due or from the lien thereof.

**SECTION 12. LIMITED COMMON ASSESSEMENTS.** Pursuant to this Section, the Board shall have the power to levy limited common assessments for Association expenses which benefit or concern fewer than all of the Lots, including with respect to the Limited Common Elements. Limited common assessments shall be assessed equitably among all of the Lots which are benefited according to the benefit received. Failure of the Board to exercise any discretionary authority under this Section shall not be grounds for any action against the Association or the Executive Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future.

## **ARTICLE V ARCHITECTURAL CONTROL**

**SECTION 1. IMPROVEMENTS.** No improvements, alteration, repair, change in paint color, excavation, change in grade, planting, landscaping, exterior decoration, or interior decoration visible from the exterior (including, without limitation, storm doors, storm windows, yard ornaments, figurines, statues, lawn art, bird baths, houses and feeders, flags, decals, window treatments and similar items) or other work which in any way alters the exterior of any Lot or the improvements located thereon from their natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner other than Declarant shall be commenced, erected or maintained upon any Lot and no building, fence wall, residence or other structure shall be commenced, erected, maintained, improved, altered or removed, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by an architectural review committee (the "Architectural Review Committee") composed of Declarant during Declarant's Development Period, and thereafter composed of the Executive Board of the Association or three (3) or more representatives appointed by the Executive Board to serve in such capacity. Temporary seasonal exterior decorations shall not require the prior approval of the Architectural Review Committee, but if any such decorations are determined, in the sole discretion of the Architectural Review Committee, to be distasteful or otherwise disruptive of the aesthetics or visual harmony of the community, the Architectural Review Committee may require that such decorations promptly and permanently be removed. In addition, the Architectural Review Committee may from time to time identify certain areas of certain areas that may be planted by the Owner without the prior approval of the Architectural Review Committee, but if any such plantings are determined, in the sole discretion of the Architectural Review Committee, to be distasteful or otherwise disruptive of the aesthetics or visual harmony of the community, the Architectural Review Committee may require that such plantings promptly and permanently be removed. In the event that an Owner neglects or fails to remove any such decorations or plantings at the request of the Architectural Review Committee, the Association may provide such removal. No item may be placed or stored on any balcony, rooftop terrace, deck or stoop without the prior written consent of the Architectural Review Committee. Under no circumstance shall any balcony, rooftop terrace, deck or stoop be used for storage of any kind. In the event that an Owner neglects or fails to remove any item at the request of the Architectural Review Committee, the Architectural Review Committee may provide such removal.

Notwithstanding the foregoing, outdoor furniture, plants and planters may be placed on balconies and window treatments and blinds that are white when viewed from the exterior shall not require the prior approval of the Architectural Review Committee, but if any such item is determined, in the sole discretion of the Architectural Review Committee, to be distasteful or otherwise disruptive of the aesthetics or visual harmony of the Condominium, the Architectural Review Committee may require

that such item promptly and permanently be removed. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times for such purpose and the cost of such removal shall be assessed exclusively against such Lot and the assessment shall be the personal obligation of such Lot Owner and a lien against such Lot as provided in Article IV of this Declaration. Notwithstanding the foregoing, nothing herein contained shall prevent or interfere with the right of Declarant to improve and develop the Properties, including the Lots, as Declarant chooses. Accordingly, Declarant need not seek or obtain the approval of the Architectural Review Committee for improvements erected on the Properties by or at the direction of Declarant. In addition, for so long as Declarant or any Affiliate owns any Lot or has the right to annex any Additional Property pursuant to Section 4(b), Article XI hereof, Declarant or its Affiliate may approve any plans and specifications rejected by the Architectural Review Committee for the construction or alteration of improvements on any Lot provided the construction or alteration approved by Declarant or its Affiliate comport with the general scheme of development approved by the Appropriate Local Governmental Authority. Such approval by Declarant or its Affiliate shall operate and have the same effect as approval by the Architectural Review Committee.

## SECTION 2. PROCEDURES.

(a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Architectural Review Committee which shall evaluate such plans and specification in light of the purposes of this Article.

(b) Upon approval by the Architectural Review Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specification, as approved, shall be deposited for permanent record with the Architectural Review Committee and a copy of such plans and specification bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specification shall not be deemed a waiver of the Architectural Review Committee's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot. Approval of any such plans and specification relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specification, as approved, and any conditions attached to any such approval. As a condition to the granting of approval of any request made under this Article, the Association may require that the Owner(s) requesting such change be liable for any cost of maintaining, repairing and insuring the approved alteration. If such condition is imposed, the Owner(s) shall evidence consent thereto by a written document in recordable form satisfactory to the Association. Thereafter, the Owner(s), and any subsequent Owner(s) of the Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to covenant and agree that the cost of maintaining, repairing and insuring such alteration shall be a part of the annual assessment or charge set forth herein, and subject to the lien rights described herein.

(c) Neither Declarant, nor any other member of the Association's Executive Board or Architectural Review Committee, shall be responsible or liable in any way for any defects in any plans or specification approved by them, nor for any structural defects in any work done according to such plans and specifications. Further, neither Declarant, nor any member of the Association's Executive Board or Architectural Review Committee, shall be liable in damages to anyone by reason of mistake in judgment, negligence, misfeasance, malfeasance or nonfeasance

arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specification or the exercise of any other power or right provided for in this Declaration. Every Person who submits plans or specifications for approval agrees, by submission of such plans and specifications, and every owner of any Lot agrees, that he or she will not bring any action or suit against Declarant, or any member of the Association's Executive Board or Architectural Review Committee, to recover any such damage.

## ARTICLE VI MAINTENANCE

SECTION 1. MAINTENANCE TO BE PERFORMED BY THE ASSOCIATION. The Association shall maintain any Common Elements owned in fee by the Association or that the Association is otherwise obligated to maintain. In addition, the Association, upon a determination by the Board, in its sole discretion, that such maintenance will benefit the Properties, the Owners, the Lots or their residents, may elect to provide maintenance or to provide enhanced maintenance for any property that serves, is adjacent to or otherwise impacts on the Properties, including, without limitation, any landscaped medians or other areas located within the public and private rights of way adjacent to the Properties. The Association also shall perform certain maintenance with respect to the grounds of each Lot subject to assessment hereunder and the exterior of the dwelling constructed on such Lot. The level of such maintenance to be performed by the Association may include: (a) mow, seed and fertilize any grassed areas, mulch, remove dead or diseased trees or shrubs if such trees or shrubs existed at the time Declarant initially conveyed the Common Elements or the Lot on which the tree or shrub is located, replace dead or diseased trees or shrubs planted by the Declarant or the Association and prune all trees or shrubs planted by the Declarant or the Association; (b) maintain all drives and walkways located on any Lot that is subject to assessments hereunder (except that the Association shall not be responsible for the removal of snow and ice); and (c) maintain the exterior of the dwelling located on each Lot as follows: paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces (including doors, garage doors, windows, steps, patios, decks and porches, but specifically excluding glass surfaces, window and door screens, garage door openers, the cap, liner, flue, damper or other interior portions of any chimney or fireplace, and storm doors, if any, all of which shall be maintained by the Owner(s) thereof in accordance with the provisions of Section 2 below). The obligations of the Association with respect to the repair and maintenance of the grounds of each Lot and the exterior of the dwelling constructed on such Lot may be modified from time to time by action of the Executive Board of the Association, which action will be effective upon at least sixty (60) days prior written notice to the Owners; provided, however, during Declarant's Development Period any modification to the scope of repair or maintenance to be provided by the Association made by the Association's Executive Board shall also require the consent and approval of the Declarant. All costs incurred by the Association in connection with such maintenance shall constitute a Common Expense. In the event that the need for any maintenance, repair or replacement required hereunder to be performed by the Association is caused through the willful or negligent act of the Owner, his family, guests or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending strike, civil commotion, aircraft, vehicles or smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, and the cost of such maintenance, repair or replacement cannot be recovered by the Association through insurance maintained by the Association, the cost of such maintenance, replacement or repairs shall be assessed exclusively against such Lot and the assessment shall be the personal obligation of such Lot Owner and a lien against such Lot as provided in Article IV of this Declaration. The Association may require the payment of such assessment prior to performing such maintenance.

**SECTION 2. MAINTENANCE TO BE PERFORMED BY THE OWNERS.** Except as otherwise provided in Section I above, each Owner shall be liable and responsible for maintenance, repair and replacement, as the case may be, of such Owner's Lot and the dwelling constructed thereon in a good and sightly condition consistent with the other Lots and dwellings within the Properties, including, without limitation, as follows: repair, replace and care of structural elements, glass surfaces, window and door screens, storm doors, air conditioning and heating equipment and all other equipment required to provide water, light, power, telephone, sewage and sanitary service to the Lot which are not publicly maintained and serve only that Lot whether located on the Lot or the Common Elements. In addition, with respect to any plantings installed by an Owner on such Owner's Lot in accordance with the provisions of Article V, Section 1, such Owner shall be responsible for the maintenance of such plantings as follows: irrigate, mulch, replace seasonal landscaping, replace dead or diseased trees or shrubs and prune all trees or shrubs. In the event that the Owner neglects or fails to maintain his or her Lot and/or his or her dwelling, the Association may provide such exterior maintenance and all cost incurred by the Association in providing such maintenance shall be assessed exclusively against such Lot and the assessment shall be the personal obligation of such Lot Owner and a lien against such Lot as provided in Article IV of this Declaration; provided, however, that the Association shall first give written notice to the Owner of the specific items of exterior maintenance or repair the Associations intends to perform and the Owner shall have twenty (20) days from the date of mailing of said notice within which to perform such exterior maintenance himself or herself. The determination as to whether an Owner has neglected or failed to maintain his or her Lot and/or dwelling in a good and sightly condition consistent with other Lots and dwellings within the Properties shall be made by the Executive Board of the Association, in its sole discretion.

**SECTION 3. EASEMENT TO PERFORM EXTERIOR MAINTENANCE.** In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article.

## **ARTICLE VII RESTRICTIONS**

**SECTION 1. LAND USE.** Except as otherwise herein expressly provided, no Lot shall be used except for single-family residential purposes and purposes ancillary to such use; provided, however, a person residing in a residence located on a Lot may use the residence for home office purposes, provided that the primary use of such Lot and residence is residential, no customers of such business visit the Lot and the address of the residence located on the Lot is not advertised as a business address. In addition, Declarant, or any Affiliate may use any Lot owned or leased by Declarant or such Affiliate as a temporary sales office and/or model for the purposes of carrying on business related to the development, improvement and sale of the Properties or the Additional Properties.

**SECTION 2. NUISANCE.** No noxious or offensive activity shall be conducted upon any Lot or the Common Elements nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No Lot or other area within Properties shall be used as a dumping ground for rubbish or as a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment and discarded appliances and furniture. No outdoor clotheslines shall be permitted.

SECTION 3. ANIMALS. No animals, livestock or poultry of any kind shall be kept or maintained on the Common Elements or on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that: (i) the total number of household pets maintained on any Lot does not exceed two (2); (ii) no such pet weighs more than thirty (30) pounds; (iii) dogs that are, or bear the primary characteristics, of any one or combination of the following breeds, are prohibited: Chow, Doberman Pinscher, German Shepherd, Pit Bull or Rottweiler; (iv) no such pets are kept or maintained for commercial purposes or breeding purposes; and (v) all such pets are kept and maintained in compliance with all laws and ordinances of the State of North Carolina, the County of Cumberland and the City of Fayetteville relating thereto; and such rules and regulations pertaining thereto as the Executive Board may adopt from time to time.

SECTION 4. OUTSIDE ANTENNAS. Except to the extent that as such restrictions may be prohibited under applicable regulations promulgated by the Federal Communications Commission or other applicable state, federal or local laws or regulations (i) no outside radio or television antennas or discs and no free standing transmission or receiving towers or satellite dishes or disks shall be erected on the Common Elements or on any Lot or dwelling within the Properties without the prior written permission for the same has been granted by the Architectural Review Committee, and (ii) any antenna or satellite dish erected on any portion of the Properties shall be affixed to the dwelling or other building served by such antenna, shall be a color which blends with its surrounds, shall have a mask only as high as reasonably necessary to receive the intended signal and shall not be visible from any street.

SECTION 5. PARKING. No boats, trailers, recreational vehicles, campers or other similar equipment or vehicles, excluding specifically operative automobiles, non-commercial trucks and passenger vehicle vans and mini-vans, shall be parked or stored within the Common Elements, or on any Lot unless completely enclosed within a garage. No recreational vehicles, campers or other like equipment or vehicles shall be located or installed on any Lot or the Common Elements to be used as a residence. Commercial vehicles shall not be parked or stored on any Lot or the Common Elements within the Properties; provided, however, the foregoing shall not be construed to prevent the temporary, nonrecurrent parking of such vehicle on a Lot for a period not to exceed 24 hours or during any period the Lot is being serviced by such vehicle.

SECTION 6. SUBDIVISION OF LOTS. No Lot shall be subdivided into a lot smaller than or different from the Lot shown on the recorded plat and no street shall be laid out across or through any Lot, except with the written consent of Declarant.

SECTION 7. SIGNS. No sign shall be placed or allowed to remain on any Lot if such sign is visible from the exterior of the improvements located on the Lot, except that street numbering, the style, size and location of which has been approved by the Architectural Review Committee, may be affixed to mail receptacles and near the front door of the dwelling. Notwithstanding the foregoing, during Declarant's Development Period, Declarant and any Affiliate shall have the right to erect and maintain signs within the Common Elements, or on any Lot owned or leased by Declarant or any Affiliate, for the purpose of advertising and promoting the sale of the Properties or the Additional Properties.

SECTION 8. MOBILE HOMES, MANUFACTURED HOMES, ETC. No mobile home, manufactured home, modular home, trailer, or other like structure shall be located or installed on any Lot. As used in this Section, mobile home, manufactured home or modular home shall mean a structure, assembled in whole or in part in a location other than on the Lot itself, transportable in one or more

sections, any section of which, during transport, is four (4) feet or more in width and ten (10) feet or more in length, which may or may not be built on a permanent chassis and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. Notwithstanding the foregoing, Declarant, builders or contractors may maintain temporary improvements (such as a sales office and/or construction trailer) on any Lot during the construction and development period.

**SECTION 9. OUTDOOR COOKING.** Outdoor cooking is prohibited on any portion of the Lots, except that, subject to any applicable regulations of an Appropriate Local Governmental Authority, outdoor cooking shall be permitted on the driveway located on each Lot provided that a conventional gas grill is used and that the grill is stored in the garage at all times that it is not in use. The Association shall have the authority to promulgate additional rules and regulations regarding outdoor cooking that may place further restrictions or limits on outdoor cooking.

## **ARTICLE VIII EASEMENTS**

**SECTION 1. EASEMENTS FOR ACCESS, UTILITIES AND OTHER PURPOSES.** There is hereby reserved and established in favor of the Declarant, the Association and each Owner a blanket, non-exclusive easements upon, across, above, and under the Properties, including all Lots, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving all or any portion of the Properties or any portion of the Additional Property (whether or not such Additional Property is added to the Properties), and for such other purposes that are not inconsistent with and do not unreasonably interfere with the intended use of such property; provided, however, no easement established pursuant to this Section shall extend onto the footprint of any building improvement. This easement shall include, without limitation, gas, water, sanitary sewer, telephone, electricity, cable television, security, storm drainage and any other service or system which the Declarant or the Association might decide to have installed to service the Properties or any portion of the Additional Property (whether or not such Additional Property is added to the Properties), as well as an easement for access to such utilities and other facilities. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables, and other equipment related to the providing of any such access, utility or service. Should any party furnishing or receiving any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement. Promptly following any construction, maintenance or other disturbance of any portion of the Properties pursuant to the easements established by this Section, the party performing such construction, maintenance or other disturbance shall remove all debris, excess soil and rock, grade, mulch or resow grass on all disturbed earth and replace any disturbed or damaged landscaping or improvements.

**SECTION 2. SIGNS.** During Declarant's Development Period, Declarant and any Affiliate shall have (i) the right to erect within the Common Elements additional subdivision signs and landscaping and lighting surrounding the same to be maintained by the Association as herein provided and (ii) the right to erect within the Common Elements signs advertising the sale and promotion of Lots or any portion of the Additional Property.

**SECTION 3. EASEMENT RESERVED BY DECLARANT.** Declarant hereby reserves such easements on, across and over the Common Elements as shall be reasonably necessary for (i) the exercise by Declarant or any Affiliate of any right herein reserved, including, without limitation, Declarant's right, should Declarant elect, to annex the Additional Property, as hereinafter defined and (ii) the development by Declarant or any Affiliate, their respective successors and assigns, of the Additional Property, should Declarant elect not to annex the Additional Property, including without limitation easements for ingress, egress and regress over private roads and streets now or hereafter erected on the Properties and easements for drainage and for the use of all utility lines, fixtures and/or their connections located within the Common Elements for the purpose of providing drainage, water, light, power, telephone, sewage and sanitary service to the Additional Properties.

**SECTION 4. ENCROACHMENTS.** In the event that any improvements on a Lot shall encroach upon any Common Elements or upon any other Lot as a result of the initial improvements constructed by Declarant or for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Elements or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Elements into any such Lot for so long as such encroachment shall naturally exist.

## **ARTICLE IX RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS**

**SECTION 1. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS.** "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

**SECTION 2. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS.** So long as any Institutional Lender shall hold any first lien upon any Lot and shall have given notice to the Association as set forth in Section 3 of this Article, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

- (a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association.
- (b) To be given notice by the Association of the call of any meeting of the Membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or By-Laws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association.
- (c) To receive notice of any condemnation or casualty loss affecting the Common Elements or any portion thereof.
- (d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(e) To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Elements, other than those specific rights vested in the Association under Article II hereof.

(f) To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

**SECTION 3. REQUIREMENTS OF INSTITUTIONAL LENDER.** Whenever any Institutional Lender desires to avail itself of the provisions of this Declaration, it shall furnish written notice thereof to the Association by CERTIFIED MAIL at the address shown in the Articles of Incorporation identifying the Lot or Lots upon which any such Institutional Lender holds any first lien or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

## **ARTICLE X PARTY WALLS**

**SECTION 1. GENERAL RULES OF LAW TO APPLY.** Each wall which is shared by the residences and placed on the dividing line between the residences shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence, or willful acts or omissions shall apply thereto.

**SECTION 2. REPAIR AND MAINTENANCE.** The cost of reasonable maintenance of a party wall shall be shared by the Owners of the Lots on which the residences that share the party wall are located in proportion to such use. Provided, however, each Owner is responsible for usual and routine maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

**SECTION 3. DESTRUCTION BY FIRE OR OTHER CASUALTY.** If a party wall is destroyed or damaged by fire or other casualty, any Owner of a Lot on which a residence which shares such party wall is located may restore or repair it, and the Owners of the other Lot on which the residence that shares the restored or repaired party wall is located shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

**SECTION 4. EXPOSURE TO ELEMENTS.** Notwithstanding any other provision of this Section, an Owner of a Lot on which a residence that shares a party wall is located who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

**SECTION 5. ASSIGNMENT OF RIGHT OF CONTRIBUTION.** The right of any Owner to contribution from any other Owner under this section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

**SECTION 6. ESTOPPEL CERTIFICATE.** An Owner who desires to sell a Lot, or the prospective purchaser of such Lot, may request the Owners of the other Lot which shares that party wall to provide a certificate stating whether or not such certifying Owner has any right or obligation of contribution with respect to such party wall against the Owner who desires to sell. Each certifying Owner from whom such certificate is requested shall, within ten (10) days after receipt of a written request for certification, furnish same to the requesting Owner or purchaser, as applicable, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of a Lot which shares a party wall with the Lot of the requesting Owner shall be conclusive evidence of its contents with respect to all other Owners of that Lot and with respect to third parties.

**SECTION 7. EASEMENT FOR REPAIR AND MAINTENANCE.** Each Owner of a Lot on which is located a residence that shares a party wall and such Owner's contractors and subcontractors shall have an easement and right of entry upon the Lot on which is located the other residence that shares the party wall to the extent reasonably necessary to repair, restore, maintain or reconstruct the party wall. Such repair, restoration, maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall repair any damage caused as a result thereof.

**SECTION 8. ARBITRATION.** In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## **ARTICLE XI GENERAL PROVISIONS**

**SECTION 1. ENFORCEMENT.** The Owner(s) of each Lot shall be governed by and shall comply with the provisions of this Declaration, the Bylaws of the Association and all rules and regulations of the Association adopted pursuant thereto, as any of the same are now constituted or as they may be amended from time to time. A default by any Owner shall entitle the Association or the Owner(s) of any of the other Lots to the following relief:

- (a) The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws of the Association and all rules and regulations of the Association adopted pursuant thereto. Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the Bylaws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including without limitation an action to recover sums due for damages, injunctive relief, foreclosure of

lien, or any combination thereof. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

(b) The Association, after notice to the Owner and a reasonable opportunity to be heard, shall have the right to assess reasonable fines against an Owner for violations of this Declaration the Bylaws of the Association or the Association's published rules and regulations by such Owner, or such Owners family, guests, invitees and lessees in an amount not to exceed \$100.00 for each violation, and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be deemed to be assessments as set forth in Article IV of the Declaration and if not paid within thirty (30) days after notice and demand therefor, the Association shall be entitled to the remedies set forth in the Declaration for the enforcement and collection of delinquent assessments.

(c) The Association, after notice to the Owner and a reasonable opportunity to be heard, shall have the right to suspend privileges or services provided by the Association (except rights of access to Lots) for reasonable periods for violations of this Declaration or the Bylaws, Articles or rules and regulations of the Association. If it is decided that a suspension of privileges or services provided by the Association should be imposed, the suspension may be continued without further hearing until the violation is cured.

(d) If an Owner is legally responsible for damage inflicted on any Common Elements, the Association may direct such Owner to repair such damage, or the Association may itself cause the repairs to be made and recover damages from the responsible Owner. If damage is inflicted on any Lot by an agent of the Association in the scope of the agent's activities as such agent, the Association is liable to repair such damage or to reimburse the Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Owner. When any such claim for damages against an Owner or the Association is less than or equal to the jurisdictional amount established for small claims by North Carolina General Statute 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the Executive Board of the Association to determine if an Owner is responsible for damages to any Common Elements or the Association is responsible for damages to any Lot. If the Executive Board fails to appoint an adjudicatory panel to hear such matters, such hearings shall be held before the Executive Board. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess liability for each damage incident against each Owner charged or against the Association not in excess of the jurisdictional amount established for small claims by North Carolina General Statute 7A-210. When the such claim exceeds the jurisdictional amount established for small claims by North Carolina General Statute 7A-210, liability of any Owner charged or the Association shall be determined as otherwise provided by law. Liabilities of Owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by lien under Section 47F-3-116 of the Planned Community Act. Liabilities of the Association determined by adjudicatory hearing or as otherwise provided by law may be offset by the Owner against sums owing to the Association and if so offset, shall reduce the amount of any lien of the Association against the Lot at issue.

(e) In any proceeding arising because of an alleged default by an Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.

(f) The failure of the Association or any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above mentioned documents shall not constitute a waiver of the right of the Association or of the Owner to enforce such right, provision, covenant or condition in the future.

(g) All rights, remedies and privileges granted to the Association or the Owners, pursuant to any terms, provisions, covenants or conditions of the Declaration or other above mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

(h) The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or other above mentioned document shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

**SECTION 2. SEVERABILITY.** Invalidation of any one of the covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

**SECTION 3. AMENDMENT.** The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated as hereinafter provided. This Declaration may be terminated only with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of the Association. This Declaration may be amended with the consent of the Owners entitled to cast at least sixty-seven percent (67%) of the votes of the Association. The foregoing notwithstanding, however, during Declarant's Development Period, this Declaration may not be amended or terminated without Declarant's consent; and no termination and no amendment relating to the maintenance or ownership of any permanent detention or retention pond shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection. In addition, no alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Declarant or of the obligations imposed herein on Declarant shall be made without the written consent of Declarant being first had and obtained and no alteration, amendment or modification of any easement rights established in favor of any property not a part of the Properties shall be effective without the written consent of the owner(s) of such property. Any notice of termination or amendment must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the instrument on behalf of the Association that the requisite Owner and Declarant approval has been obtained and is evidenced by written acknowledgment(s) signed by the Owners approving the termination or amendment and, as the case may be, if required, Declarant, and that such acknowledgments have been made a part of the Minute Book of the Association; and (3) be properly recorded in the Office of the Register of Deeds, Cumberland County, North Carolina. For the purpose of this section, additions to existing property by Declarant pursuant to Section 4 of this Article shall not constitute an "amendment." In the event this Declaration is terminated in accordance with the provisions hereinabove provided, Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of all permanent retention or detention ponds. Notwithstanding the foregoing, Declarant may at anytime unilaterally amend this Declaration to terminate or restrict any right reserved hereunder by Declarant and Declarant, during Declarant's

Development Period, and thereafter, the Executive Board of the Association, may amend this Declaration as shall be necessary, in its opinion, to correct obvious errors and omissions herein.

#### SECTION 4. ANNEXATION.

(a) Except as provided in Subsection (b) of this Section 4, Article XI, additional residential property and Common Elements may be annexed to the Properties only with the consent of the Members entitled to cast two-thirds (2/3) of the votes each class of Members of the Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during Declarant's Development Period, Declarant must also consent to such action.

(b) All or any portion of the Additional Property may be annexed by the Declarant without the consent of Members within twenty (20) years of the date of this instrument. Declarant shall have no obligation of any kind to annex any or all of the Additional Property and, should Declarant elect to annex all or any portion of the Additional Property, Declarant shall have no obligation of any kind to annex the Additional Property in any particular sequential order. Should Declarant elect to annex all or any portion of the Additional Property and accordingly to subject such property to the terms and conditions of this Declaration, with regard to all or any part of the Additional Property annexed by Declarant, Declarant shall have the right to make such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such additions and/or modifications shall have no effect upon the properties previously subjected to this Declaration. With regard to any portion of the Additional Property not annexed by Declarant, Declarant makes no representations with regard to the use of such property or the exterior appearance, design, size or intended purpose of any improvements now or hereafter erected on such property.

SECTION 6. AMPLIFICATION. The Provisions of this Declaration are amplified by the Articles of Incorporation and Bylaws of the Association; but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles of Incorporation and Bylaws of the Association on the other be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything contained in the Articles of Incorporation or Bylaws of the Association.

### **ARTICLE XII INSURANCE AND CASUALTY LOSSES**

SECTION 1. INSURANCE ON COMMON ELEMENTS. The Executive Board or the duly authorized agent of the Association shall have the authority to and shall obtain a policy of property insurance in an amount equal to the full replacement value (i.e., 100% of current "replacement cost" excluding land, foundations, excavations, streets and parking facilities) of all insurable improvements owned by the Association and located on the Common Elements with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement. Such insurance policy must protect against loss or damage by fire and other hazards covered by the standard extended coverage endorsement. Such insurance may, in the discretion of the Board, include coverage for personal property owned by the Association.

SECTION 2. LIABILITY INSURANCE. The Board shall obtain a general commercial liability policy applicable to the Common Elements covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million dollars (\$1,000,000.00).

SECTION 3. WORKER'S COMPENSATION; FIDELITY COVERAGE. In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and fidelity coverage against dishonest acts by the Association's officers, Executive Board members, trustees and employees, and all others who are responsible for handling funds of the Association, if the Association elects to manage its own affairs and directly receive and disburse its own funds (or, if in addition to professional management, the officers or Executive Board members of the Association can and do directly receive or disburse the monies of the Association) and if such coverage is reasonably available. If the Association employs a professional property management Person to manage the Association and to receive and disburse the monies of the Association, then such professional management Person shall have adequate fidelity coverage against dishonest acts and the existence of such coverage shall satisfy the requirement of this paragraph. Any such fidelity coverage shall name the Association as an obligee; shall be written in an amount equal to at least three (3) months of assessments plus reserves on hand; shall contain waivers of any defense based on the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression; and shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the Association.

SECTION 4. ADDITIONAL INSURANCE THAT MAY BE MAINTAINED BY THE ASSOCIATION. The Association, in the sole discretion of its Board, may elect to procure and maintain casualty insurance covering all or any portion of the improvements now or hereafter constructed on the Lots in such amounts and subject to such conditions as the Board, in its discretion, approves. The costs of procuring and maintaining any such insurance shall be a Common Expense and shall be assessed equally against each Lot, unless the Association, in the sole discretion of its Board, elects to assess each Lot based on the relative replacement costs of the insured improvements located on each Lot. The Association may direct that the insurance company providing coverage determine the replacement costs of the insured improvements located on each Lot for such purpose, but such determination shall not limit the amount of insurance proceeds to which any Owner shall be entitled to receive on account of any insured loss, in the event such Owner otherwise would be entitled to proceeds in excess of the replacement costs determined by the insurance company. The provisions of this Declaration are intended to guide the Association and its members in the acquisition of insurance and are not in any way intended and shall not be used to limit any coverage acquired by the Association or any Owner. The initial Board of the Association has elected to procure and maintain casualty insurance covering the improvements located on each Lot from the drywall out. The details of such coverage are available through the Association. If the Association, in the discretion of its Board, elects at any time not to maintain such coverage, the Association shall provide all Owners with at least sixty (60) days prior written notice of such change in policy.

**SECTION 5. PREMIUMS.** Except as may otherwise be expressly provided in Section 4 above, Premiums for all insurance maintained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

**SECTION 6. MISCELLANEOUS.** All such insurance coverage obtained by the Executive Board shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified below. Such insurance shall comply with these provisions:

- (a) All policies shall be written with a company authorized to do business in North Carolina.
- (b) Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Association's Executive Board.
- (c) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually.
- (e) The Association's Executive Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - (1) A waiver of subrogation by the insurer as to any claims against the Association's Executive Board, its manager, the Owners and their respective tenants, servants, agents, and guests;
  - (2) A waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
  - (3) That no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;
  - (4) That no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
  - (5) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
  - (6) That no policy may be canceled, subjected to nonrenewal, or substantially modified without at least thirty (30) days prior written notice to the Association.

**SECTION 7. INDIVIDUAL INSURANCE.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that except to the extent that the Association may elect to provide coverage pursuant to Section 4 above, the Association has no obligation to provide any insurance for any portion of individual Lots. To the extent that insurance is not maintained by the Association, each Owner of a Lot covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" casualty insurance on the Lot and all structures constructed thereon, and a liability policy covering damage or injury occurring on a Lot in an amount not less than \$500,000. The casualty insurance shall cover loss or damage by fire and other hazards commonly

insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If "all-risk" coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. If the Association elects to provide coverage pursuant to Section 4 above, each Owner of a Lot covenants and agrees with all other Owners and with the Association that each Owner shall maintain at such Owner's expense a policy or policies of insurance insuring all alterations, improvements and betterments to the Lot not covered by insurance maintained by the Association and all personal property located on or used in connection with the Lot, additional living expense in the event of a casualty, personal liability in an amount not less than \$500,000, or such greater amount as the Board may from time to time specify. The Owner of each Lot, by virtue of taking title to a Lot, shall be responsible for the payment of any deductible required to be paid in connection with any coverage of such Lot or the improvements located thereon maintained by the Association. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt annual, on or before a date established by the Board, or within ten (10) days after receipt by the Owner of a written request from the Association. If the Association acquires insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner as an individual assessment and shall be a lien on such Owner's Lot.

#### SECTION 8. DAMAGE OR DESTRUCTION TO IMPROVEMENTS INSURED BY THE ASSOCIATION.

(a) In General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. The Board shall have the enforcement powers specified in this Declaration necessary to enforce this provision.

(b) Repair and Reconstruction of Improvements Located on the Common Property. Any damage or destruction to improvements located on Common Property that are covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, the Owners of the Lots entitled to cast at least eighty percent (80%) of votes of the Association otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from

insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it is determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Properties by the Association in a neat and attractive condition. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. The Board shall have the enforcement powers specified in this Declaration necessary to enforce this provision.

(c) Repair and Reconstruction of Improvements Located on a Lot. Any damage or destruction to improvements located on a Lot that are covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, (i) the Owners of the Lots entitled to cast at least eighty percent (80%) of the votes of the Association and (ii) the Owner(s) thereof, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Owner(s) of such Lot shall be required to pay to the Association such additional necessary sums, prior to commencement of repairs or reconstruction or as work progresses, as directed by the Association, in the discretion of its Board of Directors. The Owner(s) of such Lot shall be personally obligated to pay to the Association any amounts by which the costs of repair and reconstruction exceed the proceeds of insurance collected by the Association and the Association shall be entitled to specifically assess such Lot in accordance with the provisions of this Declaration in order to collect such sums. If the funds available from insurance attributable to such Lot exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, excess insurance proceeds shall be paid to the Owner(s) of such Lot and their Mortgagee(s) as their interests may appear. In the event that it is determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the insurance proceeds shall be used first to restore the property to its natural state and the Lot thereafter shall be maintained as an undeveloped portion of the Properties by the Association in a neat and attractive condition.

SECTION 9. DAMAGE AND DESTRUCTION - INSURED BY OWNERS. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot for which insurance is not maintained by the Association shall be repaired by the Owner(s) thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period, thereafter diligently pursued and completed

within a reasonable period of time; provided, however, within sixty (60) days after the casualty, (i) the Owners of the Lots entitled to cast at least eighty percent (80%) of the votes of the Association and (ii) the Owner(s) thereof, may agree that such repairs or reconstruction need not be made or may authorize alternative improvements. In the event that it is determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the insurance proceeds shall be used first to restore the property to its natural state and the Lot thereafter shall be maintained as an undeveloped portion of the Properties by the Owner(s) thereof in a neat and attractive condition.

### ARTICLE XIII

Luxury's execution of this Declaration is to consent to the Declaration with respect to the portion of the Properties owned by Luxury; however, Luxury is not assuming any obligations of Lakeshore and is not obligated to do anything.

WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed in its name and its corporate seal hereto affixed as of the 24<sup>th</sup> day of May, 2016.

### LAKESHORE HARBOR LLC

By: Chris Manning  
Its: Manager

North Carolina  
Cumberland County

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Chris Manning, Manager.

Dated: May 24, 2016

Lenna Ann Crandell  
Printed Name: Lenna Ann Crandell  
Notary Public

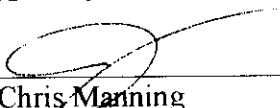
My commission expires: 7/15/2017



(N.P. SEAL)

WITNESS WHEREOF, the undersigned has caused this instrument to be executed in its name and its corporate seal hereto affixed as of the 24<sup>th</sup> day of May, 2016.

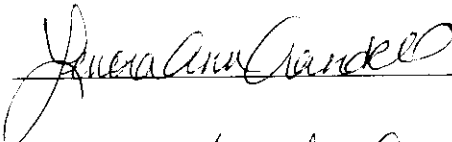
**LUXURY CONDOS LLC**

  
By: Chris Manning  
Its: Manager

North Carolina  
Cumberland County

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Chris Manning, Manager.

Dated: May 24, 2016

  
Printed Name: Lenna Ann Crandell  
Notary Public

My commission expires: 7/15/2017



**(N.P. SEAL)**