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Prepared By: Deal, Moseley & Smith, LLP, P. O. Box 311, Boone, NC 28607

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TOWNHOMES AT BROOKSHIRE

WATAUGA COUNTY, NORTH CAROLINA

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and published this 11<sup>th</sup> day of January, 2021, by RCPBD INVESTMENTS, LLC, a North Carolina Limited Liability Company (hereinafter referred to as "Declarant"), and any and all persons, firm or corporations hereafter acquiring any of the within described property.

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of that certain parcel or tract of land containing a total of 5.128 acres, the same being located in New River Township, Watauga County, North Carolina, which has been subdivided into a townhome subdivision known as Townhomes At Brookshire, to consist of 8 Lots, the same being located in Watauga County, North Carolina, together with the common areas attributed thereto, as the same is more particularly described on the plat entitled "Subdivision Plat for: Townhomes At Brookshire 5.128 acres, Phase 1" dated December 18, 2020, prepared by Blue Ridge Engineering, PLLC, and being recorded in Plat Book 28, Page 101, Watauga County, North Carolina, Public Registry; and

WHEREAS, it is in the best interest of the Declarant, as to the benefit, interest and advantage of each and every Owner hereafter acquiring any of the Lots within Townhomes At Brookshire that certain covenants, conditions, restrictions, easements, assessments, and liens governing and regulating the use and occupancy of the same be established, fixed and declared to be covenants running with the land; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the property in Townhomes At

Brookshire and for the continued maintenance and operation of the common areas as may be herein provided;

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, including the signing and sealing of this instrument, Declarant for itself, its successors and assigns, and for its future grantees, their heirs, successors and assigns, hereby declares that all of Phase 1 of Townhomes At Brookshire, containing 8 Lots, the same being located in Watauga County, North Carolina, as the same is more particularly described and shown on plat entitled "Subdivision Plat for: Townhomes At Brookshire 5.128 acres, Phase 1" dated December 18, 2020, prepared by Blue Ridge Engineering, PLLC, and being recorded in Plat Book 28, Page 101, Watauga County, North Carolina, Public Registry, and such additions as may be made subject to the provisions hereof, shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, assessments and liens (hereinafter referred to as the "Restrictions"), relating to the use and occupancy thereof, said Restrictions to be construed as covenants running with the land which shall be binding on all parties having or acquiring any right, title or interest in the said property or any part thereof, and which shall inure to the benefit of each Owner thereof. For every person or other party hereafter acquiring any of the property within Phase 1 at Townhomes At Brookshire and such additions as may be made subject to this Declaration, by acceptance of a deed or contract for deed or other conveyance of any interest in or to said property, whether or not it shall be so expressed in any such deed, contract for deed, or other conveyance, and regardless of whether the same shall be signed by such person, and whether or not such person shall otherwise consent in writing, shall take such property interest subject to this Declaration and the terms and conditions hereof and shall be deemed to have assented to the same.

This Declaration shall initially apply to the property designated for Townhome Development as Phase 1 of Townhomes At Brookshire, including 8 Lots, as the same is shown on the plat recorded in Plat Book 28, Page 101, Watauga County, North Carolina, Public Registry. Declarant reserves for itself, its successors and assigns the right to construct additional Townhomes within the Phase 1 property in the approximate locations as noted on the herein reference recorded plat, and the right to subject additional property to the provisions of this Declaration in the manner hereinafter provided. No property of the Declarant presently owned or hereafter acquired shall be subject to these restrictions except that property which is specifically made subject hereto as provided in these Restrictions. No property of the Declarant shall be subject to any restrictions by implication arising from the Declarant imposing these restrictions on the property herein identified.

## **ARTICLE I DEFINITIONS**

The following words when used in this Declaration or any supplemental declaration hereto (unless the context shall prohibit) shall have the following meaning:

Section 1. "Association" shall mean and refer to Townhomes At Brookshire Owners Association, Inc., a nonprofit corporation organized and existing under the laws of the State of North Carolina, its successors and assigns.

Section 2. "Committee" shall mean and refer to the Architectural Committee appointed by the Declarant, until such time as Declarant provides in writing for appointment of the Committee to be made by the Townhomes At Brookshire Owners Association, Inc.

Section 3. "Common Area(s)" shall mean and refer to any and all real property depicted and shown as "Common Area(s)" on the map(s) or plat(s) of Townhomes At Brookshire recorded, either now or hereafter, in the Watauga County, North Carolina, Public Registry. The "Common Area(s)" shall include all lands within the Property which fall outside of the delineated boundary lines of a Lot, including but not limited to the private drives known as Townhomes Place and Pinebrook Court, the water wells and sanitary/septic sewer system shown on the recorded plat, and the parking areas as shown on the recorded plat. "Common Area(s)" shall also mean and refer to any amenities which Declarant or the Association installs within the Property.

With respect to the parking areas which may be shown on the recorded plat or plats, Declarant reserves the right to designate specific parking areas for the benefit of each Lot, which specific parking spaces shall be considered to be limited common areas for the sole and exclusive benefit of the designated Lot. Specific rules and regulations may be established by Declarant to enforce parking restrictions.

Section 4. "Declarant" shall mean and refer to RCPBD Investments, LLC, a North Carolina Limited Liability Company.

Section 5. "Declarant Control Period" shall mean the period commencing on the date of recordation of this Declaration and continuing until the earlier of 25 full years from the registration of this Declaration, or the date upon which Declarant voluntarily terminates the Declarant Control Period.

Section 6. "Declaration" shall mean and refer to this Declaration of Covenants and Restrictions applicable to Townhomes At Brookshire and which is recorded in the Watauga County, North Carolina, Public Registry.

Section 7. "Lot" shall mean and refer to any lot or plot of land or building site within Townhomes At Brookshire with delineated boundary lines and upon which is constructed a single family dwelling unit, as shown on a subdivision plat or plats filed of record in the Watauga County, North Carolina, Public Registry.

Section 8. "Townhomes At Brookshire" shall mean that certain 5.128 acre parcel currently containing 8 Lots (designated as Phase 1), the same being located in Watauga County, North Carolina, as the same is more particularly described and shown on the plat

entitled "Subdivision Plat for: Townhomes At Brookshire 5.128 acres, Phase 1" dated December 18, 2020, prepared by Blue Ridge Engineering, PLLC, and being recorded in Plat Book 28, Page 101, Watauga County, North Carolina, Public Registry, together with the Common Areas attributed hereto, and such additions as may be made subject to this Declaration.

Section 9. "Member" shall mean and refer to any person or other entity who holds membership with voting rights in the Association.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee interest in any Lot in Townhomes At Brookshire, excluding, however, those parties having such interest merely as a security interest for the performance of an obligation.

Section 11. "Person" shall mean and refer to a natural person, as well as a corporation, partnership, firm, association, trust or other entity. The use of the masculine pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

Section 12. "Property or Properties" shall mean and refer to any property or properties which now or hereafter may be made subject to this Declaration.

Section 13. "Unit" shall mean and refer to a single family dwelling located on a Lot.

## ARTICLE II

### PROPERTIES SUBJECT TO DECLARATION, RESERVATION OF DECLARANT'S RIGHTS, ANNEXATION OF PROPERTY, AND ASSIGNMENT OF DECLARANT'S INTEREST

The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is all of a 5.128 acre parcel currently containing 8 Lots (designated as Phase 1), and being located in Watauga County, North Carolina, as shown on plat entitled "Subdivision Plat for: Townhomes At Brookshire 5.128 acres, Phase 1" dated December 18, 2020, prepared by Blue Ridge Engineering, PLLC, and being recorded in Plat Book 28, Page 101, Watauga County, North Carolina, Public Registry, together with the Common Areas attributed thereto, and such additions as may be made subject to this Declaration.

Without further assent or permit, Declarant reserves the right to file a Supplementary Declaration in order to add additional 4 Lots within the above-described Phase 1 parcel. The approximate location of said Lots are depicted on the above-referenced recorded plat. This reservation shall be exercised upon completion of the additional buildings containing the additional 4 Lots, and by the filing of the Supplemental Declaration which subjects said Lots to the terms and provisions of this Declaration.

In addition, without further assent or permit, Declarant reserves the right to adjust Lot lines and add additional land to Lots. If this reserved right is exercised, Declarant will file a new plat to reflect the adjusted Lot lines.

Until all property described on Exhibit 'A' attached hereto and incorporated herein by reference has been submitted to the provisions of this Declaration, or 25 years after the recording of this Declaration in the Watauga County Public Registry, whichever is earlier, Declarant may from time to time, but shall not be obligated to, submit to the provisions of this Declaration (i.e., annex) all or any portion of the property described in Exhibit 'A' as well as all or any portion of any parcel of land adjoining any boundary of the property described in Exhibit 'A'. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the Owner of at least a portion of the real property described in Exhibit 'A' and as such transfer as memorialized in a written recorded instrument executed by the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Watauga County Public Registry, describing the property being annexed and designating it as part of the Properties. Such Supplemental Declaration shall not require the consent of the Owners, but shall require the consent of the Owner of the property being annexed, if other than the Declarant. Such Supplemental Declaration, as applied to the Additional Property Covered thereby, may include such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplemental Declaration; and if a person or entity other than Declarant desires to add property to the scheme of this Declaration, such property may only be so added if the Declarant, in its sole and absolute discretion, gives written consent thereto. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided herein.

NOTHING IN THIS DECLARATION SHALL BE CONSTRUED TO REQUIRE THE DECLARANT OR ANY SUCCESSOR TO ANNEX OR DEVELOP ANY OF THE PROPERTY DESCRIBED IN EXHIBIT 'A' IN ANY MANNER WHATSOEVER. THE DECLARANT MAKES NO REPRESENTATION THAT THE PROPERTY DESCRIBED IN EXHIBIT 'A' WILL EVER BECOME A PART OF THE PROPERTIES OR SUBJECT TO THE JURISDICTION OF THE ASSOCIATION, OR THAT IT WILL BE SUBJECTED TO THE SAME OR SIMILAR COVENANTS, EASEMENTS AND RESTRICTIONS AS THE PROPERTIES.

The Declarant may subject any portion of the property described in Exhibit 'A' to additional covenants and easements by filing a Supplemental Declaration in the Watauga County Public Registry, concurrent with or after the annexation of said property, setting forth such additional covenants and easements. Any such Supplemental Declaration shall require the written consent of the Owner of the subject property, if other than Declarant. Any such Supplemental Declarations may set forth the controls, covenants, conditions, restrictions, easements, building guidelines, charges and liens to which the annexed property covered thereby shall be subject. Such controls, covenants, conditions, restrictions,

easements, building guidelines, charges and liens may contain such additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such annexed property to the scheme of this Declaration may desire. In no event shall such Supplemental Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, building guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to the original Properties or to previously added portions of additional property.

Without further assent or permit, Declarant also reserves the right at any time to assign to such person or entity as Declarant may choose all rights reserved under the terms of this Declaration for the benefit of Declarant. Such Person or entity shall be designated as Successor Declarant in a recorded instrument executed by Declarant.

### **ARTICLE III TOWNHOMES AT BROOKSHIRE OWNERS ASSOCIATION, INC.**

#### Section 1. Membership.

(a) Every person or entity who is purchasing one or more Lots under a contract or purchase agreement within the Property shall be a Member of the Association, subject to and bound by the Association's Articles of Incorporation, Bylaws, such Rules and Regulations as may be promulgated from time to time by the Board of Directors of the Association. The foregoing is not intended to include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Ownership of such Lot shall be the sole qualification for membership. When any Lot is owned of record in tenancy by the entirety, joint tenancy, or tenancy in common or by some other legal form of multiple ownership, or when two or more persons or other legal entity are purchasing one or more Lots under a contract or agreement of purchase, the membership (including the voting power arising therefrom) shall be exercised only as set forth in Section 2, below.

(b) During any period in which a Member shall be in default in the payment of any annual, special or other periodic assessment levied by the Association, the voting rights and right to the use of the Common Areas or any facilities which the Association shall provide may be suspended by the Board of Directors of the Association until the assessment is paid. In the event of violation by a Member of any Rules or Regulations established by the Board of Directors of the Association, such Member's voting and use rights shall be suspended by the Board of the Association after a hearing at which the general requirements of due process shall be observed. Such hearing shall only be held by the Board of Directors of the Association (or a committee thereof) after giving the Member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of violation shall be made by a majority vote of the Board of Directors of the Association or a committee thereof.

(c) No membership fee shall be charged, nor shall Members be required to pay at any time any amount to carry on the business of the Association except to pay when due the charges, assessments and special assessments levied upon each Member's Lot as specified in the Declaration or as the Association may from time to time hereafter adopt.

## Section 2. Voting Rights.

(a) Any Member who is delinquent in the payment of any charges duly levied by the Association against a Lot owned by such Member shall not be entitled to vote until all such charges, together with such reasonable attorney fees and penalties as the Board of Directors of the Association may impose, have been paid.

(b) Members shall vote in person or by proxy executed in writing by the member. No proxy shall be valid after eleven (11) months from the date of its execution or upon conveyance by the Member of his Lot. A corporate Member's vote shall be cast by the President of the Member corporation or by any other officer or proxy appointed by the President or designated by the Board of Directors of such corporation, which designation must, if requested by the Association, be in writing.

(c) Voting on all matters except the election of Directors shall be by voice vote or by show of hands unless a majority of the Members present at the meeting shall, prior to voting on any matter, demand a ballot vote on that particular matter. Where directors or officers are to be elected by the Members, the solicitation of proxies for such elections may be conducted by mail.

Section 3. Board of Directors. The Association shall be governed by a Board of Directors in accordance with its Bylaws. The Declarant shall have the right to appoint and select the initial members of the Board. The initial members of the Board need not be Owners. The Declarant shall have the right to appoint or remove any member of the Board or any officer or officers of the Association until such time as the first of the following events occurs:

- (a) The expiration of 25 full years after the registration of this Declaration,  
or
- (b) The date as of which Declarant voluntarily terminates the Declarant Control Period.

## ARTICLE IV COMMON AREA PROPERTY RIGHTS

Section 1. Use of Common Area(s). Every Owner (by virtue of Membership in the Association) shall have a non-exclusive right and easement of enjoyment in and to the Common Area(s) which shall be appurtenant to and shall pass with the title for every Lot

subject to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the agreements referred to herein, and the following:

(a) The right of the Association to limit the use of the Common Area(s) to Owners, Owner's Tenants, their families and guest when accompanied by Owner or Owner's Tenant.

(b) The right of the Association to suspend the voting and enjoyment rights of an Owner for any period during which any assessment against his Lot remains unpaid, or for any infraction of the Association's published rules and regulations.

(c) The right of the Association to dedicate or to transfer any part of the Common Area to any public agency, authority, utility or other entity for such purposes and subject to such conditions as may be agreed to by the members of this Association. No such dedication or transfer shall be effective unless the instrument agreeing to said dedication or transfer is signed by two-thirds (2/3) of the Owners.

(d) The right of the Declarant to make the Common Areas available to all Lot Owners subject to the Restrictions in additional phases. The Declarant intends to make common area throughout the development available to all property owners in additional phases. No part of the common area shall be restricted to particular parcel owners or Lot Owners unless Declarant files a map showing the restricted area in which parcels or Lot Owners shall have the right to the restricted common area.

(e) Declarant reserves the right to change the boundaries of the Common Areas and to remove certain property from the Common Areas and replace it with other Property so long as the total acreage designated as Common Area is not decreased.

Section 2. Delegation of use. The right and easement of enjoyment granted to every Owner may be exercised by members of the Owner's immediate family residing at Townhomes At Brookshire and contract purchasers who occupy the residence of the Owner within the Properties.

## **ARTICLE V COVENANTS FOR ASSESSMENTS**

Section 1. Obligation for Assessments. For each Lot owned within the Property, every Owner covenants, and each subsequent Owner of any such Lot, by acceptance of a deed therefor, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay to the Association the following assessments:

(a) Annual General Assessments as established, levied and collected by the Board as hereinafter provided; and



(b) Special Assessments as established, levied and collected by the Board as hereinafter provided; and

(c) Individual Lot Assessments for any charges particular to that Lot as established, levied and collected by the Board as hereinafter provided; together with a late fee, interest (at the highest rate allowed by law) and the cost of collection with delinquent, including a reasonable attorney's fee, whether or not suit is brought. Both annual and special assessments must be fixed at a uniform rate for all Lots;

(d) Working capital contribution, as described in Section 5, below.

Section 2. Declarant's Obligation for Assessments.

(a) During the Declarant Control Period, Declarant shall not be obligated to pay Annual General Assessments. Rather, during the Declarant Control Period, Declarant shall be obligated to pay the difference between the amount of Annual General Assessments levied on all Lots not owned by Declarant subject to Assessment and the amount of actual Common Expenses incurred by the Association during the fiscal year. Upon termination of the Declarant Control Period, Declarant shall pay any assessments levied on Lots which it owns pursuant to this Article.

Section 3. The Annual General Assessments.

(a) The Annual General Assessments levied by the Board shall be payable in monthly installments by every Owner of each Lot, payable on the first day of the month, and shall be for the following purposes and other things approved by the Board:

- (i) to maintain all landscaping located in the Common Areas in a manner consistent with the overall appearance of the Development;
- (ii) to maintain and repair the private roads, the driveways serving the Lots, street lights, signs and all parking areas used by Lot Owners;
- (iii) to pay for the operation, maintenance, repair and replacement of all water wells to be used in common by and among the Lot Owners as shown on the recorded plats of the Property, and to pay for the operation, repair, maintenance and replacement of the water wells and the water lines serving each of the Lots on the Property;
- (iv) to provide exterior maintenance upon each unit on each Lot which is subject to assessments hereunder, as follows: paint,

stain, repair, replace and care of roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, walks, any common utilities service lines (including sewer lines, systems and appurtenances, water lines, and drainage lines) serving the subject units, and other exterior improvements. Such exterior maintenance shall not include glass surfaces or screens for windows or doors. 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 paragraph;

In the event that the need for maintenance or repair of a Lot or the improvements thereon or the Common Areas is caused through the willful or negligent acts of its Owners, Owner's Tenants or through the willful or negligent acts of the family, guests, or invitees of the Owner of the Lot or Common Areas needing such maintenance or repair, the costs of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

- (v) to pay for the operation, maintenance, repair and replacement of the waste water systems which are located on the Property which are serving the Lots in the Property.
- (vi) to provide for reserves for the purpose of performing repairs and replacements of all items referenced in this subparagraph (a);
- (vii) to pay all valorem taxes levied against the Common Areas and any property owned by the Association;
- (viii) to pay for the maintenance, repair and replacement of any drainage systems installed by Declarant in the Common Areas;
- (vi) to pay for the operation, maintenance, repair and replacement of any amenities installed by Declarant in the Common Areas;
- (x) to pay the premiums on all insurance carried by the Association;
- (xi) to pay all legal, POA management, accounting and other professional fees incurred by the Declarant or the Association in carrying out the duties as set forth herein or in the Bylaws.

(b) The Annual General Assessments provided for herein, shall be payable in monthly installments and shall begin to accrue as to each Lot of a particular phase upon

recordation in the office of the Register of Deeds for Watauga County of a plat of that phase of the development and upon issuance of a Certificate of Occupancy for the dwelling located on said Lot.

Based upon the budget established by the Board of Directors for the year 2021, the general assessments provided for herein shall be in the following amounts which is based upon the size of the Units:

- (i) 1 bedroom 1.5 bath with garage - \$175.00 a month;
- (ii) 2 bedroom 2.5 bath without garage - \$175.00 a month;
- (iii) 2 bedroom 2.5 bath with garage - \$200.00 a month;
- (iv) 3 bedroom 3 bath without garage - \$225.00 a month; and
- (v) 3 bedroom 3 bath with garage - \$250.00 a month.

During the Declarant Control Period, the annual general assessments may not be increased by an amount greater than 15% per year. As provided for in Section 2, above, during the Declarant Control Period, Declarant shall be obligated to pay the difference between the amount of Annual General Assessments levied on all Lots subject to Assessment and the amount of actual expenses incurred by the Association during the fiscal year.

Section 4. Special Assessments. In addition to the Annual General Assessments, the Board may, in any assessment year, levy a Special Assessment applicable to that year and not more than four (4) succeeding years for the purpose of defraying, in whole or in part, the following:

(a) the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Areas, including fixtures and personal property related thereto, or

(b) the cost of any unusual or emergency matters, including any unexpected expenditures not provided in the budget or unanticipated increases in the amounts budgeted.

The Board's authority to levy a Special Assessment shall be subject to approval by members representing three fourths (3/4) of the Association.

Section 5. Working Capital Contribution. Upon each transfer of a Lot subsequent to the initial transfer by Declarant to a third party purchaser, the purchaser of the Lot shall be obligated to pay to the Association a Working Capital Contribution in the amount of \$500.00

which shall be deposited in the Association Account for purposes of establishing reserves for the use of the Association. On all initial sales of Lots by Declarant to third party purchasers, such Working Capital Contribution shall not be made, but the Working Capital Contribution shall be made by all subsequent purchasers.

Section 6. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot, hereby covenants, and each Owner of 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 the aforesaid assessments. Any such assessment or charge, together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment charge is made and shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 7. Effect of Non-Payment of Assessment; Remedies of the Association. Any assessment, whether Annual General Assessment or Special Assessment, not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum legal rate allowed by law. The Association, or its agents or representatives, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to which the assessment relates, and interests, cost and reasonable attorneys, fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of any of the common areas or abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first lien deed of trust (sometimes hereinafter called mortgage or first mortgage and the holder thereof being sometimes hereinafter referred to as a first mortgagee) on any Lot if, but only if, all such assessments with respect to such Lot having a due date on or prior to the date such mortgage is filed for record have been paid. The lien and permanent charge hereby subordinated is only a lien and charge as relates to assessments authorized hereunder having a due date subsequent to the date such mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgaged property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the mortgaged property pursuant to a sale under power contained in such mortgage. Sale or transfer of any Lot shall not affect any assessment lien. The sale or transfer of any Lot which is subject to any mortgage pursuant to a foreclosure thereof or under a power of sale or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer, but the Association shall have a lien upon the proceeds from foreclosure or of sale junior only to the said foreclosed first mortgage and the equity of redemption of the mortgage or trustor. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

Section 9. Collection of Assessments; Furnishing Certificate of Payment. The Board shall promptly collect all assessments due from Owners pursuant to the terms and provisions hereof and shall, upon demand of an Owner and for a reasonable charge, furnish to the Owner a certificate signed by an Officer of the Association setting forth whether the assessments on a special Lot have been paid to date.

## ARTICLE VI ARCHITECTURAL, MAINTENANCE AND USE RESTRICTIONS

Declarant shall have the responsibility of enforcing the restrictions set forth in this Article prior to the formation of the Committee, which, upon appointment by the Board of Directors, shall assume and be responsible for enforcement. References in this Article to Committee shall mean Declarant until the Committee is appointed. The following architectural, maintenance and use restrictions shall apply to each and every Lot now or hereafter subject to this Declarant:

### Section 1. Approval of plans and Architectural Committee.

(a) No construction, reconstruction, remodeling, alteration or addition to any structure, building, fence, wall, road, drive, path or improvement of any nature shall be constructed without obtaining the prior written approval of the Declarant, or as provided above, the Committee as to location, plans and specifications. The Lot Owner shall be responsible for all cost associated with any request and requirements imposed or necessary to permit the request, including a reasonable attorney's fee, whether or not suit is brought. As a prerequisite to consideration for approval, and prior to beginning the contemplated work, two (2) complete sets of building plans and specifications must be submitted to the Declarant or, as provided above, the Committee. The Declarant or, as provided above, the Committee shall be the sole arbiter of such plans and may withhold approval for any reason including purely aesthetic consideration. Upon giving approval, construction shall be started and prosecuted to completion promptly and in strict conformity with such plans. The Declarant or, as provided above, the Committee shall be entitled to stop any construction in violation of these restrictions. In the event the Declarant or, as provided above, the Committee fails within forty-five (45) days to approve or disapprove such plans and specifications, approval will not be required, and this Section will be deemed to have been fully complied with. The Declarant or, as provided above, the Committee shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications in an amount not to exceed \$100.00. Any and all exterior changes to a Unit must be approved by the Declarant or, as provided above, the Committee. This shall include but not limited to adding or replacing mailbox, storm doors which would be installed and maintained at the Owner's expense, with the understanding that the color of the mailbox and storm door would be subject to the approval of the Declarant or the Committee.

(b) Until such time as Declarant divests itself of all Lots within the Properties, Declarant shall exercise authority to approve plans and other matters set forth in this Article.

After Declarant divests itself of all Lots within the Property, an Architectural Committee shall be elected by a majority of the votes of the Members, cast in person or by proxy at a meeting duly called for this purpose.

Section 2. Design and Site Approval. No house, garage, carport, playhouse, outbuilding, fence, wall or other above-ground structure including decks or patios shall be added except as originally constructed by the Declarant unless and until a site plan, final plans and specifications showing the nature, kind, shape, height, materials, basic exterior finishes, and colors and floor plans thereof, proposed driveway location and front, side and rear elevations thereof, have been submitted to and approved in writing by Declarant, or as provided above, the Committee, as to harmony of exterior design and general quality with the existing standards of the neighborhood and as to location in relation to surrounding structures and topography. The Declarant, or as provided above, the Committee shall act with reasonable promptness upon receipt of such information to approve or disapprove the same. The Declarant, or as provided above, the Committee shall have the right and authority to disapprove the plans and specifications as submitted in the event Declarant or the Committee determine in their sole discretion that the proposed structure is not in harmony with respect to exterior design and general quality of existing structures.

With regard to any deck extensions beyond the original footprint which may be approved by Declarant or the Committee, the Owner shall be responsible for all costs which may be associated with relocation of any existing underground utilities.

Section 3. Approval of Builder. Any builder prior to performing any work on the Property, must be approved by the Declarant, or as provided above, the Committee as to financial stability, building experience and ability to build structures of the class and type of those which are to be built on the Property. No person, firm or entity shall be approved as a builder unless such person, firm or entity is adequately insured and obtains his income primarily from construction of the type which builder is to perform upon the Property. No Owner shall be permitted to act as his own builder or contractor for the exterior of any structure, except for such Owner obtains his income primarily from the construction of the type of structure to be constructed upon the Property, and otherwise meets the qualifications for approval by the Declarant, or as provided above, the Committee as hereinabove set forth.

Section 4. Improvement and Use Restrictions.

(a) All structures must be built to comply with the plans and specifications as approved by the Declarant, or as provided above, the Committee, and before any house may be occupied it must be completely finished and a certificate of occupancy must have been issued by the local or state authority empowered to do so.

(b) Incinerators for garbage, trash or other refuse shall not be used or permitted to be erected or placed on any Lot or Common Areas. Any and all equipment, coolers, woodpiles, garbage cans, refuse or storage piles placed on a Lot (whether temporary

or permanent) shall be walled in to conceal same from the view of neighboring Lots, roads, streets, or open areas. Plans for all screens, walls and enclosures must be approved by the Declarant, or as provided above, the Committee prior to construction. All storage tanks for fuel shall be buried with the following exception: LP gas tanks for the fire places are allowed in area provided for by Declarant, not to exceed 120 gallons in size, unless approved by the Declarant, or as provided above, the Committee.

(c) No lumber, brick, stone, cinder block, concrete or other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot or in Common Areas except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction to completion of the improvement in which same is to be used.

(d) No outside radio transmission tower or receiving antenna shall be erected by an Owner and no outdoor television antenna may be erected or installed if fiber optic or coax cable television reception is available to a Lot. If cable television service is not available to a Lot, then the customary outdoor television receiving antenna may be installed with the prior approval of the Declarant, or as provided above, the Committee, provided such outdoor antenna shall thereafter be taken down and removed by the Owner when and if cable television receiving service shall later be provided.

No electrical or battery powered devices shall be placed in open windows including but not limited to radios, air conditioners and fans.

(e) No Owner shall excavate or extract earth from any of the Lots or Common Areas subject to this Declaration for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots.

(f) Outside clotheslines, clothes handling devices such as lines, poles, frames, etc. will not be permitted.

(g) No advertising sign of any kind whatsoever shall be erected upon or displayed or otherwise exposed to view on any Lot or in any Common Area or any improvement thereon except for the Declarant signs for first time sales without the prior written consent of the Declarant or the Committee.

(h) No house trailer, boat trailer, camper, or other such vehicle, trailer, vessel, whether commercial or recreational, shall be permitted to be parked in any parking area and shall not be permitted on any Lot or Common Areas. It is the intention of this restriction to prevent the parking of any vehicle in the parking area other than automobiles or other types of motor vehicles approved by the Declarant or the Committee.

(i) No temporary structure shall be permitted on any Lot or Common Areas unless approved by the Declarant or the Committee, provided, however, temporary buildings

and other structures shall be permitted during the construction period of the townhomes or as a temporary real estate sales office for the sale of Lots. No outbuilding or other appurtenant structures shall be used for residential purposes, either temporarily or permanently.

(j) The paint, coating, stain, and other exterior finishing colors on any dwelling unit shall not be repainted or restained, whether in the original color or in a different color, without prior approval of the Declarant, its successors or assigns or the Committee. The landscaping, including, without limitation, the trees, shrubs, lawns, flower beds, walkways, and ground elevation, shall be maintained as originally installed by the Declarant, unless the prior approval for any substantial change is obtained from the Declarant, its successors or assigns or the Committee.

(k) No charcoal grills will be permitted on the front porch or back deck. Electric and gas grills are allowed on back deck.

#### Section 5. Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of an original townhome building and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this paragraph, the general rules of law regarding party walls and liability for property damage due to negligence, or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

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

(d) Weatherproofing. Notwithstanding any other provisions of this paragraph, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this paragraph shall be appurtenant to the land and shall pass to such Owner's successors in title.



(f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this paragraph, and within thirty (30) days thereof, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. The decision of the arbitrators shall be rendered within thirty (30) days of their appointment, shall be by a majority of all the arbitrators, and shall be binding on the Owners. In the event the Owners cannot agree on arbitrators as herein provided within thirty (30) days of the dispute, or the arbitrators do not render a majority decision within thirty (30) days of their appointment, Declarant shall be and become the sole arbitrator and its decision shall be binding on the Owners.

#### Section 6. Maintenance.

(a) Except to the extent otherwise provided herein, the Association shall be responsible for the maintenance of the exteriors of dwelling units located on the Lots, and shall keep the same in good, clean, attractive and sanitary condition.

(b) Common Areas, front, side and back portions of each Lot will be landscaped by Declarant and maintained by the Association. After the initial landscaping is installed by Declarant, no further landscaping, including without limitation the planting of new items or the removal of existing items, or other such changes in the appearance of Common Areas such front, side and back portions of their Lots shall be permitted, except with the approval of the Declarant, or as provided above, the Committee. However, these portions of each Lot shall be for the exclusive use of the Owner, subject to the reasonable rights of the Association to enter upon and maintain said portions of each Lot and to have said areas kept in neat and orderly condition, as provided above in this Section.

(c) For purposes of maintenance and repair, and Owners shall have the obligation to pay assessments to the Association to maintain and repair his individual Lot. No Owner shall, however, make any changes or alterations of any type or kind whatsoever to the exterior surfaces of his dwelling unit or to other improvements on his Lot without the prior approval of the Declarant, or as provided above, the Committee. An Owner shall maintain or, as directed by the Association, pay assessments to maintain, and keep in good repair and in a clean, safe, attractive and slightly condition, the Lot and his dwelling unit, including landscaping. An Owner shall reimburse the Association for any expenditure (including deductible amounts under insurance policies) incurred for replacing or repairing any parts of the Common Area damaged through the fault of an Owner, or the Owner's guest, invitees or tenants, and the Association shall be entitled to assess such Owner for such amounts which shall be payable, collectible and enforceable in the same manner as additional assessments. If any Owner fails to carry out or neglects the responsibilities set forth in this Section, the Association may fulfill the same and charge such Owner therefor, and such amounts so charged shall be payable, collectible and enforceable in the same manner as assessments.

(d) The Association shall provide exterior maintenance upon each Lot which is subject to assessment thereunder as follows: paint, stain, repair, replace and care for roof, gutters, down spouts, exterior building surfaces, walks, landscaping, and maintenance of the front, side and rear Lots and all exterior doors. Such exterior maintenance shall not include the maintenance or the repair of garage doors, windows, storm doors and deck doors, which shall be the sole responsibility of the Owner. Determination of whether such repair or maintenance is the obligation of the Association shall rest solely with the Association, which shall have the sole responsibility for determining the kind and type of materials used in such repair and maintenance.

(e) In the event that the need for any maintenance including but not limited to trash, cigarette butt clean up and/or repair of a Lot and its improvements or of the Common Area and its improvements is caused through the willful or negligent acts of the Owner, his family, guest or invitees or, Owners' Tenants, their families, guest and invitees, the cost of such maintenance and/or repairs shall be added to and become a part of the assessment to which that Owner is subject.

(f) To preserve the natural integrity and beauty of the land, water runoff, etc., no trees, shrubs, bushes or other vegetation shall be cut, destroyed or mutilated except with the prior written consent and permission of the Declarant, or as provided above, the Committee and permission for such cutting and removal has been obtained.

Section 7. Residential Use. Unless otherwise designated by Declarant on a recorded plat, each Lot shown on said plat subject to this Declarant shall be used only for private, single-family residential purposes and not otherwise. For purposes of this Declaration, "single-family residential purposes" shall include and allow for no more than two unrelated persons residing in a dwelling located on a Lot.

Short-term rentals are hereby allowed in standalone townhomes and attached townhomes provided only one entity owns all the attached townhomes in that group of attached townhomes. For purposes of this Declaration, short-term rentals shall be defined as any rental or occupancy, the duration of which is less than 30 consecutive days. This provision may not be modified or amended without the unanimous consent of the Declarant and all Lot Owners.

#### Section 8. Leasing Provisions.

- a) Long-Term Leases. For purposes of this Declaration, "long-term leases" shall be leases of Units for a period of thirty (30) days or longer. It is recognized that each Lot Owner has a legal right to enter into a long-term lease of his/her Lot, provided that any lease of a Lot or Unit shall contain the following language, and each Lot Owner agrees that if such language is not expressly contained therein, then such language shall be incorporated into the Lease Agreement by existence of this covenant, and the Lessee, by occupancy of the Lot or Unit,

agrees to the applicability of this Covenant, and incorporation of the following language into the Lease Agreement:

- i. Compliance with Declaration, Bylaws, and Rules and Regulations. The Lessee shall comply with all provisions of this Declaration, the Bylaws of the Association, and the Rules and Regulations which may be adopted by the Association from time to time, and these governing documents shall control the conduct of all other occupants and guests of the leased Lot or Unit in order to ensure such compliance and shall be attached to each Lease of a Lot or Unit or portion of a Lot or Unit. The initial Rules and Regulations that will govern all Units in the Property are attached hereto as Exhibit 'B' and incorporated herein by reference. Said Rules and Regulations may be modified by the Association from time to time. The Owner shall cause all occupants of his or her Lot or Unit to comply with the Declaration, Bylaws, and the Rules and Regulations adopted pursuant thereto, and shall be responsible for all violations of such occupants, notwithstanding the fact that such occupants of the Lot or Unit are fully liable and may be sanctioned for such violation. If the Lessee, or a person living with the Lessee, violates the Declaration, Bylaws, or Rules and Regulations for which a fine is imposed, notice of the violation shall be given to the Owner and the Lessee. If the fine is not paid by the Lessee within the time period set by the Board of Directors of the Association, the Owner of the Lot or Unit shall pay the fine upon notice from the Association of the Lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot or Unit.

Any violation of the Declaration, Bylaws, or Rules and Regulations adopted pursuant thereto by the Lessee by any occupant, or any guest of Lessee, is deemed to be a default under the terms of the Lease and authorizes the Owner to terminate the Lease without liability and to evict the Lessee in accordance with North Carolina Law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority by enforcement against the Lessee of breaches resulting from the violation of the Declaration, Bylaws, and the Rules and Regulations, including the power and authority to evict the Lessee as attorney-in-fact on behalf and for the benefit of the Owner in accordance with the terms hereof. In the event the Association proceeds to evict the Lessee, any cost, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be specifically assessed against the Lot or Unit and the Owner thereof, such being deemed hereby as an expense that benefits the leased Lot or Unit and the Owner thereof.

- ii. Liability for Assessments. When an Owner who is leasing his or her Lot or Unit fails to pay any assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the Assignment of any rents received from the Lessee during the period of delinquency, and, upon request by the Board of Directors of the Association, Lessee shall pay to the Association all unpaid assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by the Owner. However, Lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by Lessee shall reduce, by the same amount, Lessee's obligation to make monthly rental payments to Owner. If Lessee fails to comply with the Board's request to pay assessments or other charges, Lessee shall pay to the Association all amounts authorized under this Declaration as if Lessee were an Owner.

The above provision shall not be construed to release the Owner from any obligation, including the obligation for Assessments, for which he or she would otherwise be responsible.

Short-Term Rentals. For purposes of this Declaration, short-term rentals shall be defined as any rental or occupancy, the duration of which is less than thirty (30) consecutive days. For purposes of this Declaration, each Owner recognizes that his/her right to enter into leases for short-term rentals is a privilege and not a right, and that such privilege may be revoked by the Association as a result of the Owner's failure to abide by and comply with this Declaration and the special provisions in the Rules and Regulations relating to short-term rentals.

Short-term rentals are subject to the same use restrictions as contained herein for all Lots, including the use restriction that short-term rentals shall be used solely for "single-family residential purposes" and that no more than two (2) unrelated persons shall be entitled to occupy a Lot or Unit under a short-term rental.

Each Lease Agreement for a short-term rental shall contain the same provisions as are required for long-term rentals as set forth in Section 8(a)(i), and (ii) above. Each Owner who intends to engage in short-term rentals shall be obligated to provide to the Association the form of lease which they intend to use for their short-term rentals, which lease must be approved by the Association.

Recognizing that the nature of short-term rentals is such that there is no immediate, satisfactory remedy for the Association or the Lot Owners because of the temporary nature of each short-term rental, each Owner understands and agrees that upon receipt of a complaint by the Association from another Lot Owner alleging a violation of this Declaration or the Rules and Regulations, a hearing shall be held by the Board of Directors of the Association pursuant to Section 47F-3-107.1 of the Planned Community Act to determine if there was in fact a violation of this Declaration or the Rules and Regulations adopted by the Association. The Lot Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that in fact a violation did occur, a fine not to exceed \$2,000.00 may be imposed for the violation. In the event a second complaint is received in connection with a particular Lot or Lot Owner, the same procedure shall be followed with respect to the second complaint. In the event it is decided that a second violation of this Declaration or the Rules and Regulations adopted by the Board of Directors has occurred, the Lot Owner's privilege to engage in short-term rentals shall be permanently revoked by the Board of Directors.

Section 9. Hobbies and Activities. The pursuit of hobbies or other inherently dangerous activities including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly or unkept conditions; the shooting of firearms, fireworks or pyrotechnic devices of any type or size; and such other activities shall not be pursued or undertaken on any part of any Lot or the Common Area without the consent of Declarant and the Board of Directors of the Association.

No motor vehicle may be operated on the Property unless such motor vehicle is equipped with a muffler or other exhaust system of the type installed at the time of manufacturing, in good working order and in constant operation to prevent excessive or unusual noise, annoying smoke and smoke screens. The use of off-road motorbikes, all-terrain vehicles, unregistered or unlicensed motorcycles, or any motor-powered vehicle emitting offensive or loud noises or offensive odors or fumes is prohibited on the Property.

Because of the inherent safety issues as well as nuisance caused by such use, roller blades, skateboards, and sledding are specifically prohibited in the Common Areas unless such use in a particular portion of the Common Areas is consented to by Declarant and the Board of Directors of the Association.

Section 10. Animals and Pets. Owners only are allowed to have two standard household pets which may be kept thereon as pets for the sole pleasure and purpose of the Owner. Pets of Owner's guest, invitees or tenants without exception are not allowed on any

Lot or in any Common Areas. Only a reasonable number not to exceed two of usual and common household pets, as determined in the Association's discretion, may be kept on any Lot or in a Unit, but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock, reptiles or poultry of any kind shall be kept, raised, bred or maintained on any portion of the Property. Specifically prohibited are exotic animals such as, but not limited to, reptiles, rodents, ferrets, hedgehogs, skunks, rats, raccoons, squirrels, pigs, monkeys, arachnids, or any farm animal. Also, the following breeds, or mixed dogs of such breeds are not permitted: Pit Bull, Rottweiler, Doberman, Chow Chow, German Shepherd, Great Dane as well as any other aggressive breed as may be determined by the Board. Permitted pets shall only be kept subject to and in accordance with the Rules and Regulations attached hereto as Exhibit 'B' and incorporated herein by reference, which Rules and Regulations may be modified from time to time by the Declarant and the Board of Directors of the Association.

Section 11. Nuisances and Unsightly Materials. No house or other structure on any Lot shall be used for commercial or business purpose. Each Owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No noxious, offensive or illegal activity shall be carried on upon any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever; nor shall any substance, thing, material or pet be kept upon any Lot which will emit foul or noxious odors, or cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for pickup by garbage and trash removal services units. In the event any Owner of any Lot fails or refuses to keep such property free from any of the foregoing unsightly items, the Association may, at its option, five (5) days after posting a notice thereon or mailing a notice to said Owner at his property address requesting Owner to comply with the requirements of this Section, enter and remove all such unsightly items and growth at said Owner's expense, and Owner shall be personally liable to the Association for the costs of removal, and the costs until paid shall be a permanent charge and lien upon such Lot. By acquiring property subject to these restrictions, each and every Owner agrees to pay such costs promptly upon demand by the Association, its assigns, or representatives. No such entry as provided in this Section shall be deemed a trespass. The provisions of this Section shall not apply to Lots upon which houses are under construction.

Section 12. Governmental Regulations. Each Owner shall observe all governmental building codes, health regulations, zoning restrictions and other regulations applicable to his Lot. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 13. Authority to Promulgate Use Rules and Regulations. Rules and Regulations applicable to all of the Property have been adopted by the Board of Directors of the Association. The initial Rules and Regulations are attached hereto as Exhibit 'B'. Subject to the terms of this Section, the Rules and Regulations may be modified and whole or in part, repealed or expanded as follows:

- a) The Board of Directors of the Association may adopt rules which modify, cancel, limit, create exceptions to, or expand the Rules and Regulations. The Board shall send notice by mail to all Owners concerning any such proposed action at least 30 days prior to the proposed effective date. Such action shall become effective on the proposed effective date unless prior to such date Owners of at least 67% of the Lots within the Properties or the Declarant veto the proposed action by sending written notice of their objection to the Board.
- b) The Owners may adopt rules which modify, cancel, limit, create exceptions to, or expand the Rules and Regulations previously adopted. Any such rules shall be adopted upon the written approval of the Owners of 67% of the Lots and, so long as it owns any property described in Exhibit 'A', the consent of the Declarant. Notice thereof shall be sent to all Owners at least 30 days prior to the effective date.
- c) The Association shall provide, without cost, a copy of the Rules and Regulations then in effect to any requesting Owner or Mortgagee.

All Owners and occupants of dwelling units on Lots are given notice that use of their property is limited by the Rules and Regulations as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed are entering into and recording a contract of sale or lease, acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected and that the Rules and Regulations may change from time to time.

## **ARTICLE VII EASEMENTS**

Section 1. General. Each Lot now or hereafter subjected to this Declaration shall be subject to all easements shown or set forth in the recorded plat(s) of survey upon which such Lot is shown. No structures of any type shall be erected or placed upon any part of a Lot or Common Area which will interfere with the rights and use of any and all easements shown on said recorded plat.

Every Owner by accepting a deed to any Lot thereby grants to the Association or its agents a continuing, general easement to enter the Lot for purposes of maintenance, upkeep or repair to the landscaping, to the exteriors of the units or to the decks or for any work for which the Association is responsible.

Section 2. Utility and Drainage. An easement on each Lot may be reserved by Declarant for itself and its successors and assigns along, over, under and upon such portion of said Lots as shall, in Declarant's sole discretion, be reasonably necessary to provide adequate drainage and utility services thereto, which easements shall be in addition to such other easements as may appear on the aforementioned recorded subdivision plat(s). The purpose of these easements shall be to provide, install, maintain, construct and operate drainage facilities now or in the future and utility service lines to, from or for each of the individual Lots. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Association, except for those improvements for which a public authority or utility company is responsible. Within ten (10) days prior written notice to Owner, Declarant or the Association shall have the right to enter on to the Owner's property for the purpose of removing obstructions in such easements upon Owner's failure to do so. For the purpose of this covenant, Declarant reserves the right to modify or extinguish the herein reserved easements along any Lot lines when in its sole discretion adequate reserved easements are otherwise available for the installation of drainage facilities and/ or utility service lines. The Association may likewise reserve and grant easements for the installation and maintenance of sewage, utility and drainage facilities in, across, under and over the Common Area.

Section 3. Emergency. There is hereby reserved without further assent or permit, a general easement to all policemen and security guards employed by Declarant.

Section 4. Declarant's Rights Incident to Construction. Declarant, for itself, and its successors and assigns, hereby retain a right and easement of ingress and egress over, in, upon, under and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Lot by that Owner or his family, tenants, employees, guests, or invitees.

Section 5. Reservation of Easements for Annexation and Expansion. Declarant reserves to itself, its successors and assigns and for owners of parcels or Lots in all future phases of the development a perpetual easement and right-of-way for access over, upon and across the roads within the Properties for construction, utilities, drainage, ingress and egress, and for use of the Common Area. The location of these easements and rights-of-way must be approved and may be documented by Declarant or the Association by recorded instruments or denoted on the recorded plats for the Property.

Section 6. Easements for Use of Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:



(a) this Declaration and any other covenants and easements applicable to such property;

(b) any easements, restrictions or limitations contained or referenced in the instrument creating the Association's interest in such property;

(c) the Use Restrictions and Rules, as they may be modified pursuant to Article VI, which may include rules regulating guest use of the Common Area;

(d) the right of the Board to suspend the right of an Owner to use any recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to Article IV;

(e) the right of the Association to encumber, transfer or dedicate all or any part of the Common Area pursuant to IV;

(f) the right of the Declarant and the Association to restrict use of certain facilities within the Common Areas to Owners of Units in particular areas of the Properties who shall be responsible for paying the costs of operating the same, and to allocate or reallocate rights to use the various recreational facilities within the Common Area so as to avoid overutilization of some facilities and underutilization of others, so long as no Owner of a Unit is denied access to amenities of the same type as it was entitled to access prior to such reallocation.

(g) the right of the Declarant and the Association to grant easements over and otherwise permit use of any recreational facilities situated on the Common Areas by persons other than Owners, their families, lessees and guests, including, without limitation, resort guests, upon such terms and conditions as the Declarant or the Association deems appropriate; provided, any permanent easement benefitting property outside of the Properties shall contain arrangements for the users to share in a portion of the costs of maintaining and operating the facilities which are subject to such easement;

(h) the right of the Association to limit the number of guests or visitors within the Properties, to require authorized guests or visitors to wear or carry guest passes or similar identification, or otherwise to restrict guest or visitor access to the Properties at certain times preceding and during special events, upon prior notice to the Owners; and

(i) the right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the occupants of his Unit and guests, subject to reasonable regulation by the Association. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit, subject to the terms of this Declaration and the Use Restrictions and Rules.

Section 7. Easement of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than ten feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

Section 8. Easements for Irrigation and Flood Water. There are hereby reserved for the Declarant, the Association, and their successors, assigns, and designees, a non-exclusive right and easement over the Properties for access, ingress and egress to lakes, ponds, creeks, streams, and wetlands located within the Properties for the purpose of (a) installing, keeping, maintaining, repairing, and placing pumps in order to pump water from such lakes, ponds, creeks, streams and wetlands for the irrigation of any of the Maintenance Property; (b) constructing, maintaining, and repairing any dam, bulkhead, retaining wall, levee, or other structure retaining water therein; and (c) removing trash and other debris therefrom. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the exercise of such easements. Nothing herein shall be construed to make Declarant, the Association or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

## ARTICLE VIII INSURANCE

Section 1. Public Liability. The Board may obtain public liability insurance in such limits as the Board may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Common Area. Such insurance shall be issued on a comprehensive liability basis and shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, Board or other Owners. The Board shall review limits of coverage once each year.

Section 2. Insurance on Lots. Each Owner shall obtain and maintain at his own expense fire insurance and insurance against the perils customarily covered by an extended coverage endorsement in an amount not less than the full insurable value of the improvements, based upon replacement, and if an Owner fails to do so, the Board has the

right but not the obligation to purchase such insurance for him and assess the cost to him as an Individual Lot Assessment. Owners are responsible for insuring against personal property damage and loss, personal liability for that Lot and any other type of insurance the Owner may desire. Owners shall be required to provide the Association upon request with proof of hazard insurance coverage.

Section 3. Premiums. The cost of all insurance stated above, except coverage of Lots, shall be an Association expense and shall be included in the Annual General Assessments. If the Board obtains comprehensive insurance for all Lots, each Lot's ratable share be assessed to that Owner as an Individual Lot Assessment.

Section 4. Repair and Reconstruction after Fire or Other Casualty.

(a) Common Area. If fire or other casualty damages or destroys any of the improvements on the Common Area, the Board shall arrange for and supervise the prompt repair and restoration of such improvements substantially in accordance with the plans and specifications under which the Improvements were originally constructed, or any modification approved by the Declarant. The Board shall obtain funds for such reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such improvements, and from any Special Assessments that may be necessary after exhaustion in insurance and reserves.

(b) Lots. If fire or other casualty damages or destroys a townhouse or any other improvements on a Lot, the Owner of that Lot shall immediately proceed to rebuild and restore the improvements to the condition existing immediately prior to such damage or destruction, unless other plans are approved by the Declarant. If such Owner refuses or fails to begin to repair and rebuild any and all such damage within thirty (30) days, or fails to continue such repair or restoration in an expeditious manner, the Association, by and through its Board, is hereby irrevocably authorized by such Owner to repair and rebuild any such improvement, the cost of which shall be charged to the Owner as an Individual Lot Assessment.

(c) Insurance Proceeds: Performance of Work. All insurance proceeds received by the Association shall be deposited in a bank or other financial institution, the accounts of which are insured by a federal agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature authorized by the Board or an agent authorized by the Board. The Board may advertise for sealed bids with any licensed contractor, and may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair or reconstruction.

**ARTICLE IX  
GENERAL PROVISIONS**

Section 1. Duration. The foregoing restrictions shall be construed to be covenants running with the land and shall be binding and effective until December 31, 2030, at which time they shall be automatically extended for successive periods of ten (10) years each unless it is agreed by the vote of three-fourths (3/4) of the then Owners of the above-described Property to change, amend or revoke the Restrictions in whole or in part. Every purchaser, Owner or subsequent grantee of any interest in any Property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the covenants and restrictions of this Declaration may be extended as provided in this Article.

Section 2. Amendment. The covenants and restrictions of this Declaration, as they pertain to the Properties may be amended at any time and from time to time during the period or any extension or renewal thereof, by an agreement signed (a) by Declarant for so long as it owns a Lot; and (b) to the extent permitted by law, by at least 67% of Owners whose Lots are then subject thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record in the Office of Register of Deeds for Watauga County, North Carolina. Every purchaser or subsequent grantee of any interest in any Property now or hereafter made subject to this Declaration by acceptance of a deed or other conveyance therefor, hereby agrees that the covenants and restrictions of this Declaration may be amended as provided in this Article.

Section 3. Enforcement. If a person, firm or corporation shall violate or attempt to violate any of these Restrictions, it shall be lawful for the Association or for any person, firm or corporation owning any Property to bring an action against the violating party at law or in equity for any claim which these Restrictions may create in such other Owner or interested party either to prevent said person, firm or corporation from so doing such acts or to recover damages for such violation. The violating party shall be responsible for all costs and attorneys, fees incurred by the Association or such other Owner in such action. Any failure by the Association or any Owner to enforce any of said covenants and restrictions or other provisions shall in no event be deemed a waiver of the right to do so thereafter. Invalidation of any one or more of these Restrictions by judgment or court order shall neither affect any of the provisions not expressly held to be void nor the provisions so voided in circumstances or application other than those expressly invalidated, and all such remaining provisions shall remain in full force and effect together with the provisions ruled upon as they apply to circumstances other than those expressly invalidated.

Section 4. Delegation and Assignability. Declarant shall at all times and from time to time have the right to delegate any and all functions herein reserved to Declarant. Further, notwithstanding any other provision contained herein to the contrary, Declarant shall have the right at all times and from time to time to fully transfer, convey and assign all or part of its right, title and interest (whether real or personal) in and to Common Areas; provided, however, that any transferee, grantee or assignee shall be deemed to have assumed the same. In the event of any such sale, transfer or conveyance, Declarant shall not, however, be liable to any person for any injury or loss resulting from failure of performance or negligent

performance of Declarant's obligations under these covenants arising after such sale, transfer or conveyance.

Section 5. Headings and Binding Effect. Headings are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying the particular Sections to which they refer. The covenants, agreements and rights set forth herein shall be binding upon and inure to the benefit of the respective heirs, executors, successors and assigns of the Declarant and all persons claiming by, through and/or under Declarant.

Section 6. Binding on and Inures to Declarant's Successors and Assigns. The provisions of this Declaration of Covenants, and Restrictions shall inure to the benefit of and be binding on Declarant, its successors and assigns.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions and Restrictions to be duly signed as of the day and year first above written.

{SIGNATURE PAGE ATTACHED}

Bk 2159 Pg 493

Doc No. 701127 Kind: DECL

RCPBD INVESTMENTS, LLC  
A North Carolina Limited Liability Company

By: [Signature] (SEAL)  
Rick Miller, Manager

STATE OF NC

COUNTY OF Watauga

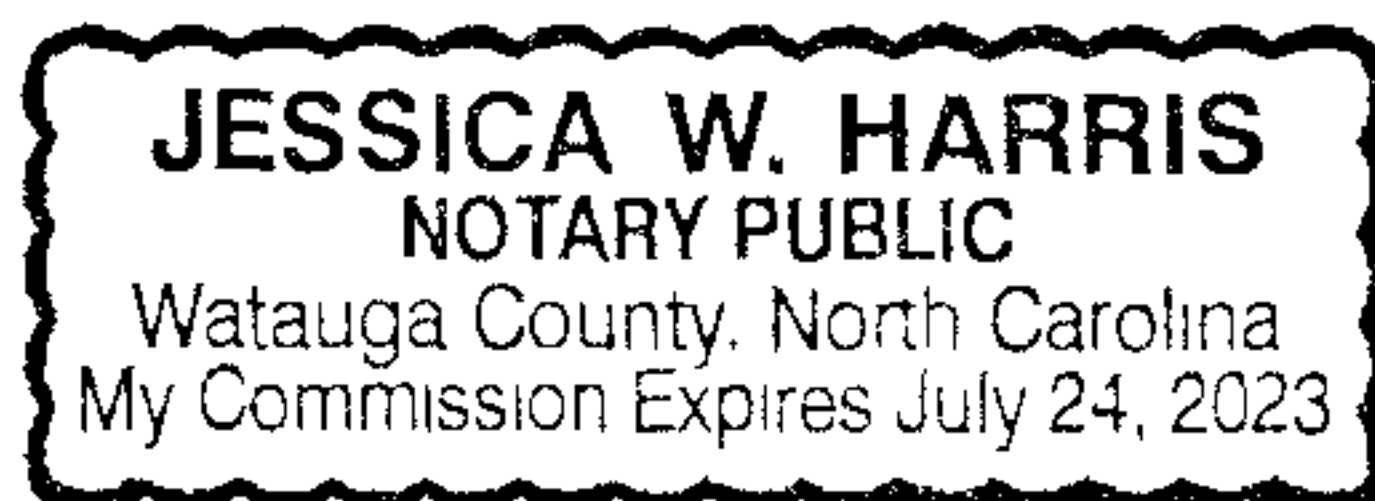
I, the undersigned, a notary public of said State, do hereby certify that Rick Miller personally appeared before me this day and acknowledged that he is Manager for RCPBD Investments, LLC, a North Carolina Limited Liability Company, and that the foregoing instrument was signed on behalf of the Company.

WITNESS my hand and official seal this the 18 day of January, 2021.

Jessica W. Harris  
Notary Public

My commission expires:  
July 24, 2023

NOTARIAL SEAL:



**Bk 2159 Pg 494**

Doc No. 701127 Kind DECL

Exhibit 'A'

**BEING all of that certain 95.128 acre tract of land, lying and being in New River Township, Watauga County, North Carolina, as shown on plat and survey entitled "Boundary Survey for The Brookshire Estate", prepared by Donald H. McNell, PLS L-2809, Appalachian Professional Land Surveyors & Consultants, P.A., recorded in Plat Book 21 at Page 150, Watauga County Registry, reference to which is hereby made for a more particular description of said property.**

**The above described property is conveyed subject to any and all street, road and utility rights of way and easements of record.**

## Exhibit 'B'

RULES AND REGULATIONS FOR TOWNHOMES AT BROOKSHIRE

These Rules and Regulations hereinafter set forth have been adopted by the Board of Directors of Townhomes At Brookshire Property Owners Association, Inc. and shall apply to and be binding upon all Owners and their tenants and their tenant's guests, agents, and persons over whom they exercise control and supervision.

The terms used in these Rules and Regulations shall have the same meaning as those which are set forth in the Declaration of Covenants, Conditions, and Restrictions for Townhomes At Brookshire.

1. Unit Occupancy. Occupancy shall be limited as follows:
  - a. One bedroom unit – two (2) persons; and
  - b. Two bedroom unit – four (4) persons; and
  - c. Three bedroom unit – six (6) persons.
2. Notification Requirements. Any Owner who plans to rent his/her Unit, whether under a long-term Lease Agreement or a short-term Lease Agreement, shall be obligated to notify the management firm engaged by the Association prior to such occupancy, stating the names of the proposed occupants and the length of their stay under the terms of the Lease Agreement. Said notification shall also include the contact information for at least one (1) of the occupants, including an email address and a cell phone number.
3. Parking. Each Townhome shall have designated parking spaces. The maximum number of cars permitted on a Lot which is used as short-term rental shall not exceed the number of actual bedrooms in the rented dwelling. All vehicles must park in parking area, never on the grass, walkways, etc. Without exception impeding ingress and regress of roads is prohibited. Parking rules will be enforced by towing and all towing will be at vehicle owner's expense.
4. Pets. The POA reserves the right to enforce penalties on Association members for failures related to maintaining responsible control over their pets. Penalties include documented reprimand, fines, and the removal of the pet(s) from Townhomes At Brookshire. For all rentals and guest, pets shall be strictly prohibited.

Notwithstanding any other provisions herein, the POA Board of Directors may make exceptions to this policy on a case-by-case basis to accommodate the needs of disabled individuals as required by law. Such exceptions will comply with applicable law as to "assistance animals" which provide assistance, service, or support to a person with disabilities (for example, a dog guiding an individual with impaired vision or alerting an individual with impaired hearing). Assistance animals other than a Service animal are subject to the same rules and restrictions as defined for a pet animal. Assistance animals other than a Service animal must be accompanied by



a letter on a physician's letterhead and signed by the physician stating that the Owner or family guest requires the animal for assistance.

Pet owners are responsible for compliance with all applicable city, state, and federal statutes, ordinances, and administrative regulations as well as this Pet Policy.

Pets allowed on properties governed by the Association are restricted to dogs, cats and small birds restricted to a cage environment. Specifically prohibited are exotic animals such as, but not limited to, reptiles, rodents, ferrets, hedgehogs, skunks, rats, raccoons, squirrels, pigs, monkeys, arachnids, or any farm animal. Also, the following breeds, or mixed dogs of such breeds are not permitted: Pit Bull, Rottweiler, Doberman, Chow Chow, German Shepherd, Great Dane, as well as any other aggressive breeds as may be determined by the Board.

Pet owners are responsible for any damage or injury caused by their pets. Any animal that inflicts injury on any resident or guest by jumping or biting must be permanently removed from the Property immediately by the unit owner. All such incidents shall be reported to the Property Manager for the POA. Any animal considered to be vicious or uncontrollable may be permanently banned from the Property by the POA Board. The POA Board shall conduct any investigation as it deems necessary for the purpose of determining whether a violation has occurred and whether a fine should be imposed. The unit owner has the right to a hearing before an adjudicatory panel appointed by the Board. The unit owner shall be given notice of the charge, opportunity to be heard, to present evidence and notice of the decision. Procedures relating to the hearing before the adjudicatory panel shall be in accordance with Section 47F-3-107.1 of the North Carolina General Statutes. Until the hearing is held, the animal which is the subject of the hearing shall be banned from the POA property. Fines may be imposed on the unit owner in accordance with Section 47F-3-107.1 of the General Statutes.

Should legal action be required to remove an animal from a unit the unit owner shall be responsible for all costs associated with the removal, including legal fees.

Owners must complete a registration form for and provide proof from a veterinarian at time of registration for each pet that all vaccinations including but not limited to rabies, heartworm and flea medications are current and up to date. The registration protocol must be repeated annually and submitted for approval to the Property Manager for the POA. All Owners with pets shall hold the Association and other property Owners harmless from any claim arising from any damage or injury caused by the Owner's pet. Pets must be on a leash and controlled at all times when outside the townhome with the following exception to a leash: dogs in Dog Park, if provided, must be supervised by its owner at all times. Without exception, pets cannot be a nuisance or cause disturbance to others which include but not limited to barking whether within or outside the townhome. "Service animals", as defined by The Americans With Disabilities Act, are not subject to a registration fee. All dogs except for "Service dogs" and including assistance animals, shall be subject to registration

and must be scheduled for DNA sampling within 48 hours of arrival. All such dog owners will be charged an initial amount of \$100.00 to pay for the DNA test. The DNA result will be registered by Pooprints for future identification purposes. Service dogs will not be required to be DNA tested.

A maximum of 2 pets, regardless of size and breed, will be allowed per unit.

Registration fee per pet, will be \$100 in addition to the \$100.00 required for the DNA test. The registration fees are subject to change at the POA's discretion.

Dogs shall not be permitted to jump on, bite or attempt to bite either persons or other dogs. Townhomes At Brookshire's unit owners' pets may be restricted from certain areas within the Property, which areas will be designated by the POA Board of Directors.

Pet owners are responsible for cleaning up after their pets. The person in control of the pet must carry a disposable plastic bag for this purpose and dispose of it in appropriate trash receptacles. Pet waste found on the Property will be DNA tested. The appropriate Owner will be fined \$300.00 and the results of the DNA testing will be final and not subject to contest or challenge to the Board.

Pets shall not be permitted to remain on porches or decks unattended.

Pet shall be kept inside the unit at all times except for transportation on and off the Property and for walks (dogs only).

Pet owners must keep the common areas surrounding their unit free of pet odor, insect infestation, waste, and litter.

Pet owners are responsible for ensuring that the rights of other residents to peace and quiet enjoyment, health, and/or safety are not infringed upon or diminished by their pet's noise, odors, wastes or other nuisance. Any resident upon observing an infraction of any of these rules should report to the Property Manager for the POA who will investigate the infraction and report to the Board of Directors.

If any complaint is not resolved and it is determined that any complaint is well founded, the pet owner will receive written notice of the violation. The violation shall result in a fine and other enforcement action. The Board has the authority to assess and collect amounts for fines, other costs, and damages, subject to and in accordance with Chapter 47F-3-107.1 of the General Statutes. Any pet found committing multiple violations shall result in eviction of pet.

If it is determined that the pet must be removed, the pet owner will be asked to remove the pet from the premises. The Board may determine in its discretion that immediate removal of the pet is required in order to protect the health, safety and/or welfare of the Townhomes At Brookshire community and its residents.

All fines, costs and expenses necessary to enforce this resolution will be levied against the property Owner and shall be an assessment against the Owner's property and subject to all liens and collections power of the POA Board.

With respect to all violations of this pet policy and any other action or event created by an animal under their supervision, pet owners shall indemnify and hold harmless the POA and its Board.

5. House Parties. There shall be no house parties in connection with short-term rentals with the understanding that the maximum number of guests allowed in connection with a short-term rental shall not exceed the maximum number of occupants as set forth in paragraph 1 above. In addition, no occupant or guest residing in a Unit under the terms of a short-term rental agreement shall play upon or suffer to be played upon any musical instrument or operate or suffer to be operated a television, radio or sound amplifier in the Unit in such a manner as to disturb or annoy other Owners and Owners' tenants.
6. Noise. Tenants, their families, guest and invitees, shall not play loud music or cause any disturbance to any other occupant or neighbor at any time.
7. Cleanliness. You shall keep the common areas (yards, parking lots, porches and decks) clean, sanitary and free of trash, cigarette butts, bottles, cans and garbage at all times.
8. Windows. No electrical or battery powered devices shall be placed in open windows including but not limited to radios, air conditioners and fans.