

Prepared by & return to:

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104 N. Fayetteville Street, Clayton, NC 27520

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

for

MILL STREAM SUBDIVISION

(A PLANNED COMMUNITY)

THIS DECLARATION is made on the 30 day of September 2022, by Strickland Hinton, LLC, a North Carolina limited liability company, with its principal office located at 114 W. Main Street, Suite 102, Clayton, North Carolina 27520, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain Properties located in Johnston County, North Carolina which are more particularly described on Exhibit A attached hereto; and

WHEREAS, it is the desire and intention of Declarant to impose on the Properties described on Exhibit A attached hereto restrictions, conditions, easements, covenants and agreements under a general plan or scheme of improvement for the benefit of all Properties herein described and the future owners thereof;

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

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ARTICLE I:

CREATION OF THE COMMUNITY

Section 1. Purpose and Intent. Declarant, as the owner of the real property described on Exhibit A, or if not the owner, with written consent of such manager, intends by the recording of this Declaration to create a general plan of development for the subdivision known as Mill Stream (“Mill Stream”). This Declaration sets forth various rights and duties that will be binding on and benefit each lot and property owner in the Mill Stream Subdivision. The provisions of this Declaration work together to establish a governance structure and flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of the real property that comprises the Mill Stream Subdivision and community.

An integral part of the development plan for the Mill Stream Subdivision is the creation of the Mill Stream Homeowners Association, Inc., a North Carolina non-profit corporation (“Association”), an association comprised of all owners of residential property in Mill Stream, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration. Each owner of property in the Subdivision will be a member of the Association and, through such membership, will have the opportunity to participate in the governance and administration of the Mill Stream Subdivision and community.

Section 2. Binding Effect. All property now or hereinafter made subject to this Declaration shall be owned, conveyed, and used subject to the provisions of this Declaration, which touch, concern, and shall run with the title to such property.

This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Subdivision, their heirs, successors, successors-in-title, and assigns, perpetually, from the date this Declaration is recorded in the Public Records.

All provisions of the Governing Documents shall apply to all Owners and to all occupants of their Units, as well as their respective tenants, guests, and invitees. Any lease on a Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

Section 3. Governing Documents. The Governing Documents create a general plan of development for the Mill Stream Subdivision which may be supplemented by additional covenants, restrictions, and easements.

In the event of a conflict or inconsistencies between or among the Governing Documents and any such additional covenants or restrictions, and/or the provisions of any other articles of incorporation, bylaws, rules, or policies governing Mill Stream, the provisions of the North Carolina Planned Community Act shall control.

If any provision of this Declaration is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

ARTICLE II:

CONCEPTS AND DEFINITIONS

As used in this Article , the following words and terms have the following definitions, unless the context in which they are used clearly indicates otherwise (when any of these and other defined words or terms in this Article have an initial capital letter, however, it is not required that their use have initial capital letters in order to have the defined meaning). Some or all of the following words and terms may have the same definitions in other portions of this Declaration; if so, they are being repeated here for convenience; if not, as used in this Article, they have the definitions contained in this Article. Words and terms defined in other portions of this Declaration and not defined in this Article but used in this Article have the definition defined for them in such other portions of this Declaration, unless those definitions are superseded or modified as a result of the conflict rules set forth in this Article (for example, words and terms defined by the Johnston County Land Development Code and used in this Declaration have the definitions contained in the Johnston County Land Development Code, notwithstanding that they may be defined differently in this Article or other portions of this Declaration; however, to the extent that a word or term is defined in this Article or other portions of this Declaration differently from how it is defined in the Johnston County Land Development Code, and the definitions do not conflict, then both definitions are applicable). With respect to words and terms used herein, the singular shall include the plural, the plural shall include the singular, and one gender shall include all.

“Act” is defined as the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as G.S. 47F, with the particular section number following the G.S. 47F reference (for example, G.S. 47F-1-101). Words and terms used in this Article that are defined in the Act but not defined in the Johnston County Land Development Code (for example, the term special declarant rights), have the definition contained in the Act.

“Area of Common Responsibility” Those areas within or abutting the Properties which the Association is authorized or responsible to maintain as a Common Expense, including, the Common Areas, passive open space, all landscaping, entrance features and signage within or adjacent to the public right-of-way, to the extent that such public rights-of-way run through or abut the Properties, and such other areas, if any, for which the Association is assigned or assumes

responsibility pursuant to this Declaration, any Supplemental Declaration, or any agreement with the owner of the property.

“Association” is defined as the non-profit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for the Properties. Sub-Association (if applicable) is defined as a non-profit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for a portion of, but not all of, the Properties.

“Base Assessment” Assessments levied on all Units subject to assessment to fund Common Expenses for the general benefit of all Units, as determined in accordance with the Articles of this Declaration.

“Board of Directors” or **“Board”** is defined as the board of directors of the Mill Stream Homeowners Association, and is the Executive board as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this Declaration and in the Act.

“Builder” Any Person designated by Declarant, who, as a primary vocation, is in the business of construction of residential dwellings and purchases one (1) or more Lots for the purpose of constructing improvements thereon for the sale thereof to a third party.

“Bylaws” shall mean and refer to the Bylaws that govern the administration and operation of the Association, as they may be amended.

“Common Area” is defined as all real property, together with any improvements situated thereon, including easements, shall refer to (i) those area of land that Declarant may convey and transfer to the Association for the common use, benefit, and enjoyment of Owners and occupants of the Properties; and (ii) property indicated and described on a plat or document recorded in the Johnston County Registry designated as “Common”, “Common Property”, “Common Area”, “Open Space”, or similar designation, if any. Common Areas may be owned or leased by the Association or it may be owned by another Person with the Association having a right or easement therein (for example, part or all of a private stormwater drainage easement located on either a Lot or real property that is not part of the Properties and that serves more than one (1) Lot in the Properties or a right of the Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the County). Common Areas include all of the following:

- (1) Any private street and private walkways in the Properties (but excluding private walkways on and solely for the benefit of an individual Lot);

- (2) Any and all stormwater control measures, including ponds, swales, berms, wetlands, retention areas, and drainage facilities located outside of the proposed NCDOT right-of-way as shown on any Recorded plat or map of the Properties;
- (3) Any water or sewer utility line that serves more than one Lot and which is either located outside public street rights-of-way or outside any County utility easement;
- (4) Any site or facility designated a Common Area, Common property open space, open space common area, amenity area, landscape buffer(s), shared cluster mailbox kiosks including any mailbox kiosk shelter, sign easement, or other similar designation on any Recorded plat or map of the Properties, or in this Declaration;
- (5) Any Code required shared facility or Open Space for the Properties;
- (6) Any public road right-of-way dedicated to the public on plats and maps of the Properties recorded in the Registry but not accepted for public maintenance by the appropriate Governmental Entity. Provided, however, that the fact that a street or road has not been accepted by the applicable Governmental Entity shall not relieve the Declarant of the obligation to take such action as is necessary to have it accepted. The Association has the right to enforce this Declarant obligation, and the Declarant shall be liable to the Association for all costs and expenses, including court costs and reasonable attorney's fees, incurred by the Association in connection with such unaccepted street improvements and enforcement of its rights against Declarant hereunder; and
- (7) Any object or improvement located on, under, in or over public property or public right-of-way which object or improvement is subject to an encroachment agreement with a Governmental Entity that is recorded in the Johnston County Registry. This shall include, but not be limited to, street lighting, shared cluster mailboxes with any shelter covering the cluster mailboxes and surrounding landscaping, signs, entrance features, landscaping, irrigation facilities, drainpipes, decorative surfaces, retaining walls, and brick pavers;

“Common Expense” is defined as all of the actual and estimated expenses incurred or anticipated by the Association in furtherance of its rights and responsibilities under the Act, the Code, and the Governing Documents, reasonable contributions to reserve funds, as the Board may find necessary and appropriate, and including specifically, but without limitation, all of the following:

- (1) All sums lawfully assessed by the Association against its Members;
- (2) Expenses of the Common Area and administration, inspection and Maintenance of the Common Area;
- (3) Expenses classified as Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;

- (4) Expenses for acquisition, Maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members;
- (5) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;
- (6) Ad valorem taxes and public assessment and charges lawfully levied against any Common Area owned in fee simple by the Association;
- (7) Fees or charges for utilities used in connection with the Common Area;
- (8) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;
- (9) Allocations to reserve funds;
- (10) Payments owed to a Governmental Entity pursuant to any stormwater agreement, except for payments in such stormwater agreement owed to the Governmental Entity by the Declarant;
- (11) Fees for services engaged by the Association;
- (12) Costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with any Governmental Entity;
- (13) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;
- (14) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses; and
- (15) Expenses agreed by the Members to be Common Expenses of the Association.

“Community-Wide Standard” The standard of conduct, maintenance, or other activity generally prevailing throughout the Mill Stream Subdivision. Such standards shall be initially established by the Declarant and may be further defined in the Use Restrictions, Design & Community Guidelines, Architectural Standards, Board resolutions, and by example, whichever is a higher standard. Such standard may contain both objective and subjective elements and may evolve as development progresses and as the needs and demands within the Subdivision change.

“Declarant” means and refers to Strickland Hinton, LLC, a North Carolina limited liability company, its successors and/or assigns who takes title to any portion of the property described on

Exhibit A, attached hereto, for the purpose of development and/or sale who is designated as the Declarant in a Recorded instrument executed by the immediately preceding Declarant.

“Declarant Control Period” is defined as any period of Declarant control of the Association, as provided in G.S. 47F-3-103(d) of the Act and established in this Declaration (which may include a vote allocation that gives Declarant, by itself, sufficient voting power to elect members of the Board).

“Declaration” shall mean and refer to this document, the Declaration of Covenants, Conditions, and Restrictions for Mill Stream Subdivision together with all Exhibits, as it may be amended and/or supplemented from time to time as herein provided.

“Design & Community Guidelines” The Subdivision’s architectural, design, and construction standards, specifications, rules, and review procedures adopted and established pursuant to this Declaration, as they may be amended.

“Governing Documents” is defined as all of the following: this Declaration; the Articles of Incorporation and Bylaws of the Association; Design & Community Guidelines and bulletins and rules and regulations of the Association; Annexation Declarations; and other declarations of restrictive or protective covenants applicable to the Properties; and all Sub-Association documents (with respect to those portions of the Properties subject to such Sub-Association documents), as the same may be amended, restated or supplemented from time to time.

“Improvement” or **“Improvements”** shall mean and include any and all man-made changes or additions to a Lot or Unit, including but not limited to the location, materials, size, and design of all structures, buildings (including any exterior devices attached to or separate from buildings, such as heading and air conditioning equipment, solar devices, antennae, satellite dishes, and clothes lines), gazebos, storage sheds, or areas, roofed structures, parking areas, fences, “invisible” pet fencing, pet “runs”, lines, and similar tethers, enclosures, walls, screening walls, landscaping (including cutting of trees), hedges, mass plantings, poles, walkways, driveways, changes in grade or slope, site preparation, swimming pools, hot tubs, jacuzzis, tennis courts, tree houses, basketball goals, skateboard ramps, and other sports or play apparatus, signs, exterior illumination, and changes in any exterior color or shape.

“Lot” is defined as any numbered or lettered portion of the Properties, together with any Improvements thereon, which is shown upon any recorded plat of any part or all of the Properties, and which is not any of the following: dedicated street rights-of-way, Common Areas, Open Space owned in fee simple by the Association, greenway or park lands owned in fee simple by the County.

“Maintain”, “Maintenance”, “Maintaining”, or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering, and preservation.

“Member” shall mean all Owners and each Person who or which holds membership in the Association as provided in this Declaration.

“Mortgage” a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot and Unit.

“Mortgagee” is defined as the holder, beneficiary, or payee under any Mortgage.

“Open Space” is defined as open space or passive use areas as designated on a final plat duly recorded with the Registry, or as required by the Code, or by the conditional use zoning of the Properties for the perpetual benefit of the Community. Open Space areas required under the Code are required as compensation for the flexible lot dimensions allowed on part or all of the Properties and Open Space areas in Conditional Use Zoning Districts may be required as consideration for such conditional use zoning. Accordingly, Open Space may not be conveyed except in strict compliance with the Code. Under the Code, Open Space may be owned by an appropriate public body, land trust, non-profit or for-profit organization established for the purpose of land conservation or recreational purposes or may be provided or dedicated for the continuing control of the Association or held by a Person subject to the recording of a permanent conservation easement, similar open space, or recreational land dedication.

“Owner” is defined as the record Owner, whether one or more Persons, of fee simple title to any Lot and shall include Declarant as to any Lot owned by Declarant. Owner shall not include any Person who holds an interest in a Lot merely as security for the performance of an obligation or tenant.

“Person” or **“Persons”** shall mean a natural person, a corporation, a partnership, a trustee, or any other legal entity.

“Properties” is defined as all of the real property subject to any part or all of the terms of this Declaration. The plat of the Properties entitled “Subdivision Plat of Mill Stream Subdivision recorded in Plat Book 95, Pages 304 through 305, of the Johnston County Registry and any future development on the Property further described in Exhibit A.

“**Subdivision**” or “**Mill Stream Subdivision**” or “**Community**” shall mean the real property described in Exhibit A along with such additional or annexed property designated as being part of Mill Stream and as is submitted and subjected to the provisions of this Declaration, but excluding the property withdrawn from the Subdivision in accordance with this Declaration.

“**Supplemental Declaration**” is defined as, shall mean, and refer to any Supplemental Declaration of Covenants, Conditions, and Restrictions filed in the Registry to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described herein.

“**Unit**” shall mean a portion of the Properties, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as a detached single-family residence. This term shall refer to the Lot and land which is part of the Unit as well as any Improvements thereon. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain a single unit until such time as a subdivision plat is filed on record for all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the definition of Unit and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

ARTICLE III:

ASSOCIATION FINANCES

Section 1. Obligation for Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Unit, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) stormwater assessments created and established pursuant to this Article; (4) special assessments; (5) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (6) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner, (7) late payment charges, interest on unpaid assessments, costs of collection, including without limitation, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (8) all other assessments and charges imposed or allowed to be imposed by this Declaration.

The Association at all times has the right to include as part of the assessments or other charges applicable to the Properties and the Owners thereof such amounts as are required to pay all Common Expenses and all financial obligations of the Association imposed by the Code and governmental entities, either, (i) directly on the Association, or (ii) indirectly on the Association by imposition of the financial obligation on some or all of the Owners, with the Association having responsibility for collection and payments.

Section 2. Purpose of Assessments. There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under the Governing Documents, as a working capital fund, specifically including, but not limited to: making contributions for the expenses of maintaining, repairing, replacing, improving, operating, and Insuring the Area of Common Responsibility, including amounts due to third-parties who perform such tasks on behalf of the Association, and the costs of labor, equipment, materials, management, supervision, inspections, compliance with regulations, and utilities; taxes, if any, imposed on the Association or Common Area; the cost of insurance and fidelity bond coverage obtained pursuant to this Declaration; expenses of monitoring and enforcing compliance with provisions of this Declaration and all Exhibits hereto and all instruments referenced herein; expenses arising out of the Association's indemnification obligations, expenses arising out of any measure undertaken to enhance the safety of Owners and occupants of Units and the Mill Stream Subdivision; expenses of architectural and design control; expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Members; administrative expenses; legal, accounting, and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Community in good, clean, and attractive condition, and to maintain and enhance property values and marketability of Units. Such assessments shall commence and at the time and in the manner set forth in this Article.

Section 3. Types of Assessments. The Association is authorized to levy the following types of Assessments to cover the Common Expenses of the Association, as follows:

- (a) **Base Assessments.** Common Expenses that directly or indirectly benefit all of the Units shall be allocated among all of the Units that are subject to Assessment under this Article as a Base Assessment. Base Assessments shall be fixed at a uniform rate for all Units on a per Unit basis and shall be collected on a monthly basis or other periodic basis. The Board shall determine the amount of Base Assessment to adequately fund the Working Capital Fund for each fiscal year at the time the budget is prepared, subject to adjustment in the event that the budget is revised during the year. Notice of the amount of the Annual Base Assessment, as it may be adjusted, shall be provided to each Owner.

- (b) Special Assessments. Any Common Expenses of a non-routine nature, or which are not anticipated in the Association's annual operating budget, or which exceed budgeted amounts, may be assessed as a Special Assessment in addition to other authorized assessments for the cost of any construction, reconstruction, repair, restoration, or replacement of a capital improvement upon the Common Areas, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible. Special Assessments shall be allocated equally among all Units subject to Assessment. Special Assessments shall be payable in such manner as the Board may determine, and may be payable in installments over a period of time, in its discretion.
- i. Notice of any Special Assessment shall be sent to each Owner at least thirty (30) days prior to the due date of such Special Assessment (or the first installment thereof). Any Special Assessment in excess of five hundred dollars (\$500.00) per Unit per fiscal year shall require the affirmative vote or written consent of Class "A" Members representing more than 50% of the total Class "A" votes in the Association or by their designated proxy, and the affirmative vote or written consent of the Class "B" Member, if such exists, at a meeting duly called for this purpose. Provided, however, that the Board of Directors, in its sole discretion, may declare that a special assessment be levied against all Units, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. Any such special assessment shall be in an amount not to exceed Five Hundred and 00/100 Dollars (\$500.00) per Lot or Unit and may be levied no more than once every five (5) years from the date of recording by Declarant of a deed to the Association or the County for the Common Areas.
- (c) Specific Assessments. The Association may assess the following expenses as a Specific Assessment against particular Unit(s):
- i. Those costs, including overhead and administrative costs, of providing benefits, items or services to a Unit or the occupants thereof upon the request of the Owner(s), which Assessments may be made in advance of the provision of the requested benefit, item, or service as a deposit against costs to be incurred on behalf of the Owner(s); and
- ii. Those costs incurred in bringing the Unit(s) into compliance with the Governing Documents or as a consequence of the conduct of the Owner(s) or occupants of the Unit, their agents, contractors, employees, licensees, or guests (subject to the notice and hearing requirements in this Declaration).

This Declaration may allow different classes of membership in the Association and may allow different levels of Annual Base Assessments and other assessments to be imposed for different classes of membership.

Section 4. Budgeting; Amount of Assessments. The Association is at all times empowered to levy assessments against all Units that are subject to assessment and the Owners of Units within the Properties for the payment of Common Expenses. Subject to the provisions of this Section 4, such assessment rates shall be set at a level which is reasonably expected to produce total income for the Association to cover the total budgeted Common Expenses, including reserves.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget provided, however, if the budget provides for an annual assessment per Unit not in excess of the Maximum Annual Base Assessment in effect for that Fiscal Year of the Association, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire Membership vote to reject the budget. If any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board. The provisions of this subsection shall not apply to, nor shall they be a limitation upon, any change in the annual assessment or the Maximum Annual Base Assessment incident to a merger or consolidation as provided in G.S. 47F-2-121 of the Act.

- (a) **Maximum Annual Base Assessment.** Notwithstanding the foregoing, the Maximum Annual Base Assessment which may be levied on any Unit without a vote of the membership for the 2022 calendar year shall be \$320.00, and may be increased by ten percent (10%) each subsequent year by Declarant during the Declarant Control Period. The Maximum Annual Base Assessment after the expiration of the Declarant Control Period for each subsequent Fiscal Year for purposes of voting percentages to ratify the budget is 110% of the amount of the annual assessment for the immediately preceding Fiscal Year.

Section 5. Authority to Assess Owners; Time of Payment.

- (a) The obligation to pay Assessments shall commence as to each Unit on: (i) the day of conveyance or transfer of title to a Unit; (ii) the day of the month in which the Unit is made subject to this Declaration; or (iii) such date fixed by the Board after the Board first determines a budget and levies assessments pursuant to this Article, whichever is later.
- (b) Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not waive the Association's right to collect such Assessments retroactively or release any Owner from the obligation to pay any

Assessment when made. Each Owner shall continue to pay Base Assessments on the same basis as during the year for which an Assessment was made, if any, until a new Assessment is made, at which time the Association may retroactively assess any shortfalls.

- (c) Assessments shall be paid in such a manner and on such dates as established by the Board. Unless the Board otherwise provides, Base Assessments may be paid in monthly installments. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 6. Capitalization of Association; Working Capital Fund. Upon acquisition of record title to a Unit by an Owner other than the Declarant or Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount of \$320.00. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected at the time of closing of the sale of the Unit and disbursed therefrom to the Association for use in covering operating expenses incurred by the Association pursuant to the Governing Documents.

Section 7. Effect of Non-Payment; Remedies. Except as otherwise provided in this Article, each Owner, by accepting a deed or entering into a recorded contract of sale for any Unit, agrees to pay the Assessments authorized in this Declaration. No Owner shall be exempt from liability for any Assessment provided for herein for reason of non-use of the Common Area, or unavailability of the use or enjoyment of the Common Area, or abandonment or leasing of such Owner's Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action or inaction by the Association.

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be charged on the Owner's Unit as provided in G.S. 47F-3-1 16 of the Act and, upon filing of a claim of lien in the office of the clerk of superior court of the county in which the Unit is located in the manner provided in G.S. 47F-3-H6(g), shall be a continuing lien upon the Unit against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Unit and/or Lot who obtains title to the Unit and/or Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Unit and Lot which became due prior to the acquisition of title to such Unit and Lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest,

the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Unit and Lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one (1) Person held an ownership interest in the Unit or Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Unit until the amounts due are paid.

Section 8. Declarant's Obligation to Fund Deficits: Assessment Credit. During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a person or entity providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant). Declarant's obligation to fund Operating Deficits may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners.

After the end of the Declarant Control Period, the Declarant, at its sole option, may receive an assessment credit toward payment of annual assessments due and payable by Declarant thereafter for Lots or Units owned by Declarant, in an amount equal to aggregate of the Operating Deficits paid by Declarant as provided herein. Declarant may not charge or collect interest or any other charge or fee on any monies paid by the Declarant, for Operating Deficits. As determined by Declarant, the assessment credit may be applied to payment of all annual assessments due from Declarant after the end of the Declarant Control Period until it has been credited in full.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Unit sale or transfer of any Unit and Lot shall not affect the assessment lien. However, the sale or transfer of any Unit and Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Unit or Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the Property owned by a charitable or non-profit

organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Certificate of Payment. The Association shall, upon written request from an Owner or the Owner's authorized agent, and for such reasonable processing fee as the Board may determine, furnish a certificate signed by an officer of the Association, or by a person whom the Association has delegated the authority to issue such certificates, setting forth whether the assessments and other charges against a specified Unit have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment and is binding on the Association, the Board, and every Owner.

ARTICLE IV:

THE ASSOCIATION AND MEMBERSHIP

Section 1. Function of the Association. The Association, as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the Community in accordance with the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of North Carolina. Its responsibilities include, but are not limited to:

- (a) Management, maintenance, modification, operation, and control of the Area of Common Responsibility and common elements shared by the Owners of the Subdivision;
- (b) Interpretation and enforcement of the Governing Documents; and
- (c) Upon delegation or termination of the Declarant's authority under this Declaration, administering the design review process for the Subdivision.

Section 2. Membership. Every Owner within the Properties which is subject to assessment shall be a Member of the Association, and by execution of this Declaration or by acceptance of a deed conveying to such Owner title to any Unit and/or Lot, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Member's Unit. If a Unit is owned by more than one (1) person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in the Governing Documents, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from

time to time by the Owner in a written instrument provided to the Secretary of the Association. Upon termination of ownership, an Owner's membership with respect to the transferred Unit and Lot shall automatically terminate and be automatically transferred to the new Owner of the Unit and Lot.

Section 3. Classes of Voting Members. The Association shall have two (2) classes of voting Membership, Class "A" and Class "B":

- (a) Class "A". Class "A" Members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership under this Article, except that there shall be only one (1) vote per Lot and no vote shall be exercised for any property which is exempt from assessment. All Class "A" votes shall be cast as provided in Section 4 of this Article.
- (b) Class "B". The Class "B" Member shall be the Declarant. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Declarant Control Period, as specified in the Bylaws. Additional rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under and specified in the Governing Documents.
 - i. The Class "B" Membership shall terminate upon the earlier of:
 - (1) two (2) years after expiration of the Class "B" Control Period pursuant to the Bylaws; or
 - (2) when, in its sole discretion, Declarant so determines; or
 - (3) The date upon which the Declarant no longer owns any part of the Properties.
 - ii. Upon termination of the Class "B" Membership, Declarant shall be a Class "A" Member entitled to one (1) Class "A" vote for each Unit it owns.

Section 4. Voting Rights. Each Member shall have those voting rights established in this Declaration, which may be different for different classes of membership. If a Unit is owned by multiple Owners, the votes allocated to that Unit shall be cast only in accordance with the agreement of a majority in interest of the multiple Owners unless otherwise provided in the Governing Documents. A majority agreement is conclusively presumed if only one (1) of the multiple Owners casts the votes allocated to that Unit, unless any of the other Owners of the Unit protest such co-Owner's vote promptly to the Person presiding at the meeting.

Section 5. Proxies. At all meetings of Members, each Member may vote in person (or if a corporation, partnership or trust, through any officer, director, partner, or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of North Carolina law. Each proxy shall be in writing, specify the Unit(s) for which it is given, and shall be signed by the Member or its duly authorized agent, dated, and provided to the Board prior to any meeting for

which it is effective. A proxy which fails to specify the Unit(s) for which it is given shall be presumed to cover all votes which the Member giving such proxy is entitled to cast. In the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, or upon receipt of notice by the Board of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation. No proxy shall exceed a term of eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

Section 6. Quorum. Except as otherwise provided in the Governing Documents, a quorum is present throughout any meeting of the Association whenever Persons entitled to cast ten percent (10%) of the votes are present in person or by proxy at the beginning of the meeting. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Governing Documents, the quorum requirements at the next meeting shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

ARTICLE V:

DEVELOPMENT OF THE COMMUNITY

Section 1. Annexation and Expansion by Declarant. Declarant shall have the unilateral right and option, from time to time, to expand the Subdivision by annexing in any portion of the property described in Exhibit A by recording a Supplemental Declaration that describes the additional property to be annexed and subjected to the provisions of this Declaration. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property to be annexed, if other than Declarant.

Declarant shall have the unilateral right to annex additional real property not described on Exhibit A so long as any portion of the annexed property is contiguous to the Properties or located within a five (5) mile radius of the Properties. Such expansion shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property to be annexed into the Subdivision and Properties.

Declarant's right to expand the community pursuant to this Section shall expire when all property described in Exhibit A has been subjected to this Declaration or forty (40) years after the recording of this Declaration in the Public Records, whichever is later. Until then, Declarant may transfer or assign this right to any Person that is the developer of at least a portion of the real

property in Exhibit A. Any such transfer shall be memorialized in a written, recorded instrument executed by Declarant.

Section 2. Annexation and Expansion, by the Association. The Association may also subject additional property to the provisions of this Declaration by filing a Supplemental Declaration in the Public Records describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Members representing more than fifty percent (50%) of the Class "A" votes at a meeting duly called for such purpose with the consent of the owner of such property. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is necessary.

Section 3. Additional Covenants and Easements. Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property. Such additional covenants and easements may be set forth in either a Supplemental Declaration subjecting such property to *this* Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

ARTICLE VI:

ADDITIONAL RIGHTS RESERVED TO DECLARANT

Section 1. Withdrawal of Property. Declarant reserves the right to amend this Declaration, so long as it has a right to expand or annex additional property into the Subdivision pursuant to this Declaration, for the purpose of removing any portion of the property from coverage of this Declaration, provided such withdrawal is not unequally contrary to the general plan of development. Such an amendment shall not require prior notice nor consent of any Person other than the Owner of the property, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be affected by the Declarant.

Section 2. Marketing and Sales Activities. Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and

activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, construction facilities, business offices, and signs. Declarant and authorized Builders shall have easements for access and use of such facilities.

Section 3. Right to Develop. Declarant and its employees, agents, and designees shall have a right of access and use and easement over and upon the Properties for the purpose of making, constructing, and installing such improvements as it deems appropriate in its sole discretion and to complete any and all improvements indicated on the plats and construction drawings. For so long as Declarant owns any portion of the Properties, Declarant may designate sites for which it owns within the Subdivision for public or quasi-public sites and neither the Association nor any Owner shall have a right to object such designation. Declarant may also designate such sites on property, which it does not own, provided the Owner consents to such use. Every Person that acquires any interest in the Properties acknowledges that Mill Stream is a new development, and may extend over several years, and agrees not to protest, challenge, or otherwise object to changes necessary and required to develop the Subdivision.

Section 4. Right to Approve Additional Covenants. No person shall record any declaration of covenants, conditions, and restrictions, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by the written consent signed by Declarant and recorded in the Public Records.

Section 5. Right to Approve Changes in Community Standards. No amendment or modification to any Use Restrictions and Rules or Design and Community Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration, or which may become subject to this Declaration in accordance with the Articles herein.

Section 6. Exclusive Rights to Use Name of Development. No person shall use the name "Mill Stream" or any derivative of such name in any printed, electronic, or promotional material without Declarant's prior written consent. However, Owners may use the name "Mill Stream" in printed, electronic, or promotional matter where such term is used solely to specify that particular property is located within Mill Stream and the Association shall be entitled to use the word "Mill Stream" in its name.

Section 7. Termination of Rights. The rights set forth in this Article shall terminate upon the earlier of (a) forty (40) years from the date of this Declaration is recorded in the Public Records, or (b) recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE VII:**MAINTENANCE AND REPAIR**

Section 1. Owner Responsibility. Each Owner shall maintain their Unit and all structures, parking areas, landscaping, grounds, and improvements comprising their Lot and Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration, or other covenants applicable to such Unit and Lot. This shall include, but not be limited to, the obligation to maintain all Common Areas, easement areas, drainage, and swales, adjacent to such Owner's Lot up to the edge of any pavement, property line, or open space; provided, there shall be no right to remove trees, shrubs, or similar vegetation without prior approval from the Board. This provision shall not require an Owner to remove growth in areas left in a totally natural and undisturbed condition.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include the responsibility for repair and replacement, as necessary to maintain the property to level consistent with the Community-Wide Standard. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the replacement cost of all insurable improvements on their Unit, less a reasonable deductible. If the Association assumes responsibility for obtaining insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising their Unit, the Owner shall proceed promptly to repair or to reconstruction a manner consistent with the original construction or such other plans and specifications as are approved in accordance with the provisions of this Declaration. Alternatively, the Owner shall clear the Lot or Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Section 2. Association Responsibility. Except as noted herein, the Association shall accept conveyance of all Common Area, including those improvements installed thereon by Declarant, to maintain and keep in good repair the Area of Common Responsibility and such portions of any additional property included within the Area of Common Responsibility as may dictated by this Declaration. The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, stormwater control measures, property dedicated to it on any recorded plat of the Properties or other recorded document in the Public Record, and property or facilities owned by Declarant and made available, on a temporary

or permanent basis, for the primary use and enjoyment of the Association and its Members, and shall remain part of the Area of Common Responsibility and maintained by the Association until Declarant revokes such privilege of use and enjoyment by written notice to the Association.

ARTICLE VIII:

ARCHITECTURAL CONTROL & STANDARDS

Section 1. General. The primary purpose of these Covenants, Conditions, and Restrictions and the foremost consideration in the origin of the same has been the creation of a community which is aesthetically pleasing and functionally convenient. The establishment of certain objective standards relating to design, size, and location of dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each Unit of the Properties and of technological advances and environmental values.

Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that, as the developer of the Properties, Declarant has a substantial interest in ensuring that the improvements within the Properties preserve and promote the desirability of the Mill Stream Subdivision and do not impair the Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article (the "Work") shall be commenced on such Owner's Unit unless and until the Declarant or its designee has given its prior approval for such Work, which approval may be granted or withheld in the sole discretion of Declarant or its designee.

No structure or thing shall be placed, erected, installed, or posted on the Properties and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting, or removal of landscaping) shall take place within the Properties, except in compliance with this Article and Governing Documents.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with the originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of their dwelling without prior approval. However, modifications to the interior of screened porches, patios, and similar portions of a dwelling visible from outside of the structure shall be subject to approval.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer unless otherwise approved by Declarant or its designee in its sole discretion.

Such architectural standards, Design & Community Guidelines shall be administered by the Declarant or its designee(s) until such time as Units have been constructed upon 100% of the Property and the Lots and conveyed to Owners other than home builders, or until such time as the Declarant or its designee shall delegate such responsibility to an architectural standards committee

(hereinafter referred to as the “Architectural Review Committee” or “ARC”) composed of not less than three (3) Members of the Association (“Reviewer”). Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARB or the Declarant’s rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

In order to implement the purposes of these Covenants, the Declarant may establish and amend from time-to-time objective standards and guidelines, in the Mill Stream Homeowners Association’s Design & Community Guidelines, including, but not limited to, architectural standards and construction specifications, uniform fence regulations, uniform sign regulations, uniform mailbox regulations, landscape guidelines, and environmental rules and regulations as defined hereinafter, and which shall be binding on all Owners, Lots, dwellings, Units, and Properties.

Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

Section 2. Procedures. Prior to commencing any Work within the Scope of this Article, an Owner shall submit the appropriate application for approval of the proposed Work in such form as the Design Guidelines, Declarant, or Declarant’s designee may specify. Such application shall include plans and specifications (“Plans”) with plot plan (showing the proposed location of such building or structure, drives, and parking areas, exterior shape, size and height), structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, windows, fixtures, and other features of proposed construction, as applicable. The Design and Community Guidelines and Reviewer, may require the submission of such additional information as reasonably necessary to consider any application. The Reviewer may, in its sole discretion, designate one (1) or more days per month when applications, Plans, and information will be accepted for consideration.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. In addition, the Declarant, its designee, or the Architectural Review Committee, as the Reviewer, may require prior written approval of a landscape plan.

The Reviewer shall, within sixty (60) days after receipt of a completed application, all required information, and Plans, respond in writing to the applicant as specified on the application form. In the event approval of the application and Plans is neither granted nor denied within sixty (60) days following receipt by the entity having review responsibility of a written request for approval, the requested Plans shall be deemed to have been approved.

If the Work does not commence on the project for which the applications and Plans have been approved within one (1) year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing the proposed Work. Once construction has commenced, it shall be diligently pursued to completion. All Work shall be completed within one (1) year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, the Declarant, or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements.

Section 3. No Waiver of Future Approvals. Each Owner acknowledges that that the persons reviewing the application under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledgement that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the reviewer may refuse to approve similar proposals in the future. Approval of applications or Plans for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

Section 4. Variances. The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances require, in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 5. Limitation of Liability. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction, or modifications, nor for insuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings and structures are of comparable quality, value, or size, or of similar design. Neither the Declarant, the Association, the Board, any

committee, or member of any of the foregoing shall be held liable for soil conditions, drainage, or other general site work, nor for any defects in plans revised or approved hereunder, nor for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit or dwelling. In all matters, the ARC and all persons comprising the ARC shall be defended and indemnified by the Association as provided in this Declaration.

Section 6. Fees. For the purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred for having any application reviewed by architects, engineers, or other professionals. The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

Section 7. Standards.

- (a) **Approved Building Materials.** Materials approved for any building must match the existing materials and colors, exterior finish must be fiber cement siding and brick or stone may be used for the front steps. Other materials must be approved in writing by the Declarant or the Architectural Review Committee, as the case may be.
- (b) **Driveways and Walkways.** All walkways or walks must be paved with concrete, stone and concrete mixture, brick pavers, or such other material as may be approved in writing by the Declarant or the Architectural Review Committee, as the case may be. Driveway piping and temporary gravel driveways must be installed before any type of construction is commenced on any Lot to minimize erosion and tracking of mud onto streets.
- (c) **Signs.** Except as may be required by legal proceedings, no sign shall be erected or maintained on any Lot or Unit by anyone including, but not limited to, an Owner, a tenant, a realtor, a contractor, or a subcontractor, until the proposed sign size, color, content, number of signs, and location of sign(s) shall have been approved in writing by the Declarant; however, customary signs erected by Builders) in the ordinary course of building and marketing newly constructed homes shall be exempt from regulation. Refusal or approval of size, color, content, number of signs, or location of sign(s) may be based by the Declarant any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant seems sufficient. The Declarant further reserves the right to promulgate and amend from time-to-time uniform sign regulations (the "Uniform Sign Regulations") which shall establish standard design criteria for all signs, including,

but not limited to, real estate sales signs, erected upon any Lot in the Properties. The Declarant and its agents shall have the right, whenever there shall have been placed or constructed on any Lot in the Properties any sign which is in violation of these restrictions, to enter immediately upon such Properties where such violation exists and summarily remove the same at the expense of the Owner.

- (d) It shall be the responsibility of each Owner, tenant, contractor, or subcontractor to prevent the development of any unclear, unsightly, unkempt, unhealthy, or unsafe conditions of Unit, buildings, structures, or grounds on any Lot which shall tend to substantially decrease the beauty or safety of the Properties, the neighborhood as a whole, or the specific area. The Declarant and its designees, or agents shall have the right to enter upon any Lot for the purpose of correcting such conditions, including, but not limited to, the removal of trash which has collected on the Lot, and the cost of such corrective action shall be paid by the Owner. Such entry shall not be made until thirty (30) days after the Owner of the Lot has been notified in writing of the need to take corrective action and unless such Owner fails to perform the corrective action within said thirty (30) day period; provided, however, that should such conditions pose a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provisions of this paragraph shall not create any obligation on the part of the Declarant to take any such corrective action.
- (e) No mailbox (which term shall be deemed to include the post) shall be erected or maintained on any Lot. Individual mailboxes are strictly prohibited. Cluster mailboxes shall be constructed for mail delivery to the subdivision. The Maintenance and upkeep of the cluster mailboxes, any shelter covering the cluster mailboxes, and surrounding landscaping shall be the responsibility of the Association.
- (f) No fence shall be erected or maintained on any Lot until the proposed fence design, color, and location have been approved in writing by the Declarant or the Architectural Review Committee. Refusal or approval of design, color, or location may be based by the Declarant or the Architectural Review Committee upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant or Architectural Review Committee deems sufficient. No alteration in the exterior appearance of any fence shall be made without prior written approval by the Declarant or the Architectural Review Committee. The Declarant further reserves the right to establish uniform fence regulations (the "Uniform Fence Regulations") which shall define standard design criteria for all fences erected upon any Lot in the Properties. At no time will a fence of any kind be approved that will be placed forward of the rear foundation line of

the house. Fences shall not be placed on any Lot nearer to the street or streets than is permitted under the set-back requirements.

- (g) No additional driveways or sidewalks may be installed on any Lot without the prior written approval of the Reviewer.
- (h) No yard art, including plastic flowers, garden fencing, which is visible from the street may be displayed on any Lot without the prior written approval of the Declarant, Board, or ARC.

ARTICLE IX:

USE RESTRICTIONS

All Owners are given notice that use of their Unit and the Common Areas are limited by the Use Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. No rule or restriction shall be adopted in violation of the following provisions, except as may be specifically set forth in this Declaration (either initially or by amendment). The Governing Documents establish, as part of the general plan of the development of the Subdivision, a framework of covenants (i.e. binding obligations), conditions and restrictions that govern the Mill Stream Community. However, within that framework, the Board and Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology which inevitably will affect the Mill Stream Community, its Owners and residents.

Section 1. Laws and Ordinances. Every Owner and occupant of any Unit, their guests, and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state, and municipal governments applicable to the Properties and any violation thereof may be considered a violation of this Declaration; provided, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances, and rules.

Section 2. Protection and Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment), neither the Board nor the Members may adopt any Use Restrictions in violation of the following provisions:

- (a) **Similar Treatment.** Similarly situated Owners shall be treated similarly.
- (b) **Abridging Existing Rights.** If any Use Restriction would otherwise require Owners or occupants of Units to dispose of personal property which they properly maintained in or on the Unit prior to the effective date of such Use Restriction, or

to vacate a Unit in which they lawfully resided prior to the effective date of such Use Restriction, such Use Restriction shall not apply to any such Owners without their written consent.

- (c) Activities Within Units. No Use Restriction shall interfere with the activities inside of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create an unreasonable source of annoyance or nuisance to the community, or that create any noxious or offensive activity.
- (d) Alienation. No Use Restriction shall prohibit the sale of any Unit, or require consents of the Association or Board for the sale of the Unit.
- (e) Occupants Bound. The Governing Documents and any rules and regulations or use restrictions promulgated pursuant thereto which govern the Community shall apply to all Owners, occupants, guests, and invitees of any Unit. Every Owner shall cause all occupants of their Unit to comply with the Governing Documents and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Governing Documents and rules and regulations adopted pursuant thereto.
- (f) Quiet Enjoyment. No noxious, illegal, or offensive activity shall be conducted upon any portion of the Properties in the Subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Community. Nor shall any portion of the Properties be used, in whole or in part, for long-term storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or become an annoyance or nuisance to the community. No substance, thing, or material shall be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that is dangerous, unsightly, unpleasant, or of a nature as may diminish the enjoyment of the Properties.

Section 3. Restricted Activities and Conditions. The following are prohibited within the Mill Stream Community, unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

- (a) Any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Unit or Lot, whether such portion is improved or unimproved, except in compliance with the provisions of this Declaration. If not addressed in the Architectural Guidelines or Design & Community Guidelines, the Board or the ARC, in their discretion, may prohibit or permit such thing as it deems

appropriate. This shall include, without limitation, signs, gazebos, basketball hoops, playsets or swing sets, sports and play equipment, garbage cans, ornamental lawn figures, above ground swimming pools, landscaping, walls, and fences of any kind.

- (b) Business Activities. An Owner or occupant may conduct business activities within the Unit so long as: (1) the existence or operation of the business activity is not apparent by sight, smell, or sound from outside the dwelling; (2) the business activities conform to zoning requirements; (3) the business activity does not generate excessive traffic; (4) the business activity does not involve door-to-door solicitation of Mill Stream residents; and (5) the business activity does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of the other Owners and residents of the Mill Stream Community.
- (c) Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside or interior of their dwelling shall not be abridged, except that the Association may adopt time, place, and manner restrictions on the extent of such displays that are visible from outside the dwelling and of the kind that are not normally displayed in dwellings located in single-family residential neighborhoods for the purpose of minimizing damage and disturbance to other Owners and occupants. Declarant or the Board, where applicable, shall have the authority to provide rules and regulations of the display of political signs;
- (d) Parking.
- i. Owners, occupants, their invitees and guests shall park their vehicles in the garages or driveways serving the Units or in appropriate spaces. The parking of any vehicles is prohibited on public or private streets or thoroughfares within the Properties, except for construction vehicles of the Declarant, it's affiliates, agents, or designees or Builders, their employees, agents which may temporarily park on the streets of a construction area during the Declarant Control Period;
 - ii. The parking or storing of commercial vehicles, tractors or similar equipment, mobile homes, recreational vehicles, all-terrain vehicles, trailers (with or without wheels), boats or watercraft, campers, or similar vehicles anywhere within the Properties other than in enclosed garages is prohibited. Such vehicles may be parked in driveways on a temporary basis for such a period of time as is reasonably necessary to load, unload, or prepare such vehicles for use. Notwithstanding the foregoing, commercial vehicles, recreational vehicles, trailers, boats or watercraft may be parked or stored on a Lot with the prior written approval of Declarant or the Board of Directors. Declarant, Board, or ARC may require that such vehicles,

- watercraft, or trailers be parked and screened as to be concealed from view of the street, neighboring Units;
- iii. Stored vehicles that are wrecked or obviously inoperable shall not be permitted to remain on the Properties, except within enclosed garages without prior written approval from Declarant or the Board; and
 - iv. No automobile, truck, or vehicle of any kind shall be parked on any street abutting the Properties after receiving written notification from the Declarant, Board, or governmental agency to remove the automobile, truck or vehicle;
- (e) Off-Road Vehicles. No off-road vehicles, including without limitation, all-terrain vehicles, side-by-sides, dirt bikes, go-carts, or similar vehicles will be permitted to operate or use on or within any portion of the Properties. Golf carts that are properly authorized for operation on public streets and operated by a licensed driver are permitted, provided the owner of the golf cart is responsible for any damages caused thereby. Any such vehicles mentioned in this Section must be stored in the garage, including golf carts, when not in use;
- (f) Animals and Pets. No animal, livestock, or poultry of any kind shall be raised, bred, kept, or allowed to remain on any portion of the Properties other than the usual and common household pets with the following exceptions or with written permission from the Board or ARC:
- a. No more than four (4) dogs may be kept by an Owner, and any dogs that are kept shall be housed inside the Owner's dwelling;
 - b. No pets shall be kept, bred, or maintained for any commercial purposes on any portion of the Properties;
 - c. No pets may run freely at any time and must be kept under the direct control of the owner by leash or harness or contained within the boundaries of a Lot by an approved fence enclosure, to be approved in writing by the Declarant or Architectural Review Committee;
 - d. No animals shall be kept, caged, chained or tied to a stake, tree, or similar outdoor confinement of any kind on any portion of the Properties;
 - e. No person shall keep, permit, and/or cause the keeping of any animal otherwise allowed which endangers the health and safety of, habitually or frequently makes objectionable noise to constitute a nuisance to the occupants of other Units;
 - f. All dogs shall be on a leash and remain under the control of a responsible person at all times when outside the boundaries of the Unit;

- g. No “runs” shall be erected, constructed, installed, or permitted on the Properties; and
 - h. Pet owners are required to clean up after their animals at all times in the Common Areas, Subdivision streets, and Lots.
 - i. Violations will be subject to a fine and/or legal action.
- (g) Satellite Dishes and Similar Devices. Satellite dishes, antennas, and similar devices for the transmission of television, radio, internet, or other services of any kind shall not be permitted on the Properties; except as may be permitted, provided that the device is one (1) meter or less in diameter or diagonal measurement and such device is placed in the least conspicuous location on the dwelling in which an acceptable quality signal can be received and is screened from the view of the street and adjacent Units in a manner consistent with the Community-Wide Standard and Design & Community Guidelines.
- (h) Swimming Pools. All swimming pools must be located in the rear yards of any dwelling, not impede any septic system or repair areas, consistent with the Design & Community Guidelines, and approved in writing by the Declarant or Architectural Review Committee after obtaining the requisite permitting from the appropriate governing agencies. No swimming pools of any type or kind shall be allowed without express approval by the Declarant or Architectural Review Committee.
- (i) Accessory Buildings. No accessory building of any nature whatsoever (including, but not limited to, detached garages, sheds, barns, storage buildings, dog houses, and greenhouses) shall be placed on any Lot without the prior written approval of the Declarant or the Architectural Review Committee, either of which shall have sole discretion relating to the location and type of accessory building which shall be permitted on any Lot. Accessory buildings shall have an exterior finish of siding material that matches the dwelling exactly, or similar material and color, as may be approved in writing by the Declarant or the Architectural Review Committee, as the case may be. Metal storage buildings shall not be permitted, nor shall any accessory building be built using old, re-purposed, or previously used materials. No garage may be used for human habitation temporarily or permanently.
- (j) Unightly or Unkempt Conditions. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, hazardous, or unkempt condition on their Lot. Any activity that creates noise, emits foul or obnoxious odors outside of the dwelling, or other conditions that frequently disturb the peace or threaten the safety of the occupants of other Units.
- (k) Garbage, Trash, and Yard Waste. Storage and accumulation of garbage, trash, rubbish, yard waste, refuse, and unsightly materials of the like is prohibited, except

when stored in approved containers and must be collected at the next regular garbage pick-up. Dumping of garbage, trash, yard waste (including grass clippings, fertilizers, leaves or other debris in any drainage ditch, stream, pond, or elsewhere within the Properties, except those fertilizers may be applied to landscaping on a Lot, provided care is taken to minimize runoff.

Section 4. Prohibited Activities and Conditions.

- (a) Land Use and Building Type. No Lot shall be used except for single-family residential purposes; provided, however, Builders may use any Lot owned by Builders as a temporary sales office and/or model for the purposes of carrying on business related to the development, improvement, and sale of property and/or homes in the Properties. The temporary sales office may be a trailer and shall not be required to have a foundation. No structures shall be erected or allowed to remain on any Lot except one (1) detached single-family dwelling not to exceed two and one-half (2 ½) stories in height, exclusive of basement, and a private (enclosed) garage capable of containing not less than two (2) nor more than three (3) mid-sized cars and (with the approval of the Declarant, Board, or Architectural Review Committee);
- (b) Mobile Homes, Manufactured Homes, etc. No mobile home, manufactured home, modular home, trailer, or other like structure shall be located or installed on any Lot. As used in this Section 6, mobile home, manufactured home, or modular home shall mean a structure, assembled in whole or in part in a location other than on the Lot itself, transportable in one (1) or more sections, any section of which, during transport, is four feet (4') or more in width and ten feet (10') or more in length, which may or may not be built on a permanent chassis and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. Notwithstanding the preceding, a temporary sales trailer without foundation may be used on any Lot during the development and marketing of the Properties by a Builder with prior approval from Declarant;
- (c) Subdivision of Lots. The subdivision of a Lot or Unit into two or more Lots or Units, or changing boundary lines of any Lot after a subdivision plat including such Lot or Unit has been approved and recorded in the Johnston County Register of Deeds is strictly prohibited. However, Declarant expressly reserves the right to replat or subdivide any portion of the Properties it owns;
- (d) Trespassing. Trespassing on any Lot is strictly prohibited;
- (e) Ponds, Lakes, and Streams. Fishing, swimming, boating, use of personal floatation devices, or other active use of ponds, lakes, streams, or other bodies of water within the Properties is strictly prohibited. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the unauthorized

use of any ponds, lakes, streams, rivers, or other bodies of water within or adjacent to the Properties;

- (f) Riparian Buffers and Wetlands. Any activities or construction by an Owner or the Association which materially disturb or destroy the natural areas of vegetation, wildlife, wetlands, Riparian Buffers, or air quality of any portion of the Properties without prior authorization from the proper governmental entity shall be prohibited;
- (g) Tree Removal. No tree shall be removed, except for diseased or dead trees, or trees needing to be removed to promote the growth of other trees or for safety reasons, unless prior written approval is obtained in accordance with this Declaration. In the event of an intentional or unintentional violation of this Section, the violator may be required to replace the removed tree as determined by the Board.
- (h) Wildlife. Capturing, trapping, or killing of wildlife within the Properties, unless authorized by Declarant or the Association shall be prohibited.
- (i) Any condition or thing which will result in the cancellation, increase in premium, or reduction in coverage of insurance maintained by the Association or which would be in violation of any law or other applicable requirement of governmental authorities;
- (j) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair.

Section 5. Waiver of Minor Violations. Unless such a waiver or variance is inconsistent with the provisions of the Johnston County Code, both the Declarant and the Board of Directors of the Association shall have the right to waive a minor violation of, and allow a minor variance from, the restrictions contained in this Article, where the same resulted unintentionally or without gross carelessness on the part of any Owner (including, without limitation, Declarant) and/or is not materially harmful to the Properties. For the purpose of this Section, a minor variance shall be deemed to be any variance of ten percent (10%) or less, when the provision in question involves a minimum or maximum distance, size, or measurement. If such waiver is granted in writing, then thereafter any matter so waived shall no longer be deemed a violation of these Covenants.

Section 6. Use of Common Area. The Association shall promulgate rules and regulations regarding use and enjoyment of the Common Area by all persons in .

Section 7. Stormwater Management Restrictions. In accordance with the Johnston County Stormwater plan approval, the following restrictions and conditions shall apply:

- (a) No Owner shall amend, alter, modify, impede, remove, or change the stormwater control measures or stormwater facilities, drainage channels or culverts which are

located on such Owner's Lot without prior approval from Declarant or the Board, and/or the proper government agency, if applicable.

- (b) Each Lot Owner shall bear the costs and be responsible for all stormwater control measures or other drainage flow or stormwater facilities, which are located on such Owner's Lot. Declarant, the Board, and/or proper government agency, if applicable must first approve any proposed or necessary corrective actions which are necessary or required.

Section 8. Reasonable Rights to Develop. No Use Restriction or action by the Association or Board shall unreasonably impede Declarant's rights to develop the Subdivision.

ARTICLE X:

EASEMENTS

In addition to any easements described in any recorded plat applicable to the Properties, Declarant grants the following easements:

Section 1. Easements in Common Area. Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to the Unit, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

Section 2. Easements of Encroachment. Declarant grants reciprocal appurtenant easements of encroachment, and for the maintenance and use of any permitted encroachment, between each Unit and such portion or portions of the Common Areas due to the unintentional placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, and maintenance and use of any encroaching structure or improvement, except that no easement for encroachment shall exist:

- (a) for any structure or improvement constructed in violation of the Governing Documents;
- (b) beyond a distance of five feet (5'), as measured from any point on the common boundary along a line perpendicular to such boundary;

Section 3. Easements for Utilities, etc.

- (a) Declarant hereby creates and reserves for itself and such other Persons as it may designate, all utility providers, all governmental agencies having jurisdiction over the Properties, and upon the expiration of the Declarant Control Period, grants to the Association perpetual non-exclusive easements throughout the Properties (but not through a structure) to the extent reasonably necessary for the purposes of:
- i. installing, replacing, repairing, and maintaining utilities, infrastructure, and other improvements serving the Properties, including, as applicable, water, power, gas, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, drainage systems, street lights, signage, garbage collection, postal delivery, emergency and rescue services, public roads and right of ways, and septic systems; and
 - ii. accessing to inspect, read, maintain, and replace utility meters.
- (b) Any damage to a Lot or Unit resulting from the exercise of the easements described in this Article shall promptly be repaired by, and at the expense of, the Person exercising the easement shall restore the area to near the same condition as reasonably practicable, prior to the exercise of the easement. The exercise of these easements shall not extend to permitting entry into the dwelling or structures on any Lot, nor shall it unreasonably interfere with the use of any dwelling and, except in an emergency, entry into any Unit shall be made only after reasonable
- (c) Declarant also reserves for itself the non-exclusive right and power to grant and record in the Public Records such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any real property described in the Exhibits attached hereto.
- (d) Declarant reserves the right (i) to release all or any portion of the Properties from the burden, effect, encumbrance of any easements granted or reserved under this Section, or (ii) to define the limits of any such easements; provided, Declarant shall relocate at its own expense, any utilities or similar infrastructure located on or under that portion of the property being released.

Section 4. Easements Shown on Recorded Maps. There are hereby reserved easements in addition to those shown on the recorded Subdivision Plats. In the event of a conflict in the width of any easement reserved herein or on the recorded plat, the wider easement shall prevail. Within any such easements, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation of stormwater facilities, drainage systems, and utilities, or which may change the direction or flow of such facilities or systems. Notwithstanding the foregoing, no governing entity having jurisdiction over the Properties shall be required to obtain the consent of the Association or an Owner when working within utility easements.

Section 5. Priority of Easements. Each of the easements referred to in this Article shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Areas, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the property or any portion thereof.

Section 6. Declarant Easement. If any encroachment shall occur subsequent to subjecting the Properties to this Declaration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. All Common Area and every Lot shall be subject to an easement for entry and encroachment by the Declarant until the expiration of the Declarant Control Period for the purpose of refining, installing, or altering any utilities, grading, erosion control, stormwater, or drainage areas to complete any and all improvements indicated on approved construction plans or as deemed necessary by Declarant; provided the exercise of this easement shall not unreasonably interfere with the use of the dwelling and, except in an emergency, entry into any Lot shall be made only after reasonable notice to the Owner and/or occupant thereof.

Section 7. Landscape Easements. The Association shall be responsible for Maintaining and replanting any shrub, tree, or re-establishing groundcover located within any area designated on a recorded map of the Properties as a landscape easement, vegetative buffer, or similar designation. Association expenses for Maintaining a landscape easement or similar designation are Common Expenses. Whenever a slope easement co-exists, in whole or in part, within a designated landscape easement, and any future public improvement adjacent to the slope easement removes or causes any of the groundcover, shrubs, or trees within the slope easement to die or become unhealthy, it shall be the responsibility of the Association to replace the groundcover, shrubs, and trees in accordance with the minimum applicable type, quantity, size, and spacing requirements of the Code within one-hundred and eighty (180) days of completion of the public improvement. Within any area designated on recorded maps of the Properties as a landscape easement or similar designation, no vegetation shall be removed without the prior written consent of the Association.

Section 8. Sight Triangles. An easement for sight triangles is reserved as shown on the subdivision plats recorded in the Public Record. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may obstruct safe sight for traffic at street intersections.

Section 9. Right of Entry; Maintenance, Emergency, and Enforcement. Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its responsibilities that are assigned in this Declaration. The Association shall have the right, but not the obligation to enter upon any Unit for emergency, security, and safety reasons. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice

to the Owner. This right of entry shall not authorize entry into any single family dwelling without the permission of the Owner, except by emergency personnel acting in their official capacities.

ARTICLE XI:

ASSOCIATION RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES

Section 1. Acceptance and Control of Common Area.

- (a) The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon, including, without limitation
- (b) Declarant and its designees may convey to the Association personal property, fee title, leasehold, or other property interests in any real property, improved or unimproved, described on Exhibit A. The Association shall accept and maintain such property at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments of property lines or to accommodate public or quasi-public facilities.

Section 2. Management. The Association, through its Board, may employ a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize.

ARTICLE XII:

INSURANCE

Section 1. Insurance to be Maintained by the Association. Commencing not later than the time of the first conveyance of a Lot to a Person other than the Declarant, the Association shall procure and maintain (i) hazard insurance on the Common Area(s), insuring against all risk of loss commonly insured against, including fire and extended coverage of peril, and (ii) liability insurance, in an amount of not less than one million dollars (\$1,000,000.00), covering all

occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use of Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for Maintenance, repair, and/or replacement in the event of a casualty, regardless of ownership; The Association shall obtain and maintain such other insurance as required in this Declaration or such other forms of insurance, and in such coverage amounts, as determined by the Board to be required or beneficial for the protection or preservation of the Common Area and other property of the Association or otherwise is in the best interests of the Association.

Section 2. Insurance to be Maintained by Owners. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full insurable value of his or her Unit except that the amount shall not be required to exceed the replacement cost of the Unit. An Owner shall exhibit to the Board, upon request, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be included in the annual assessment of the Owner and shall constitute a lien against his or her Lot until paid as a result of enforcement by the Association or otherwise.

ARTICLE XIII:

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Rights Reserved to Institutional Lenders. “Institutional Lender” or “Institutional Lenders”, as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, and other reputable mortgage lenders and guarantors and insurers of first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any Mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

- (a) To be furnished with at least one (1) copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year.
- (b) To be given notice by the Association of the call of any meeting of the Membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

- (c) To be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place for which it or they may designate in writing to the Association.
- (d) To inspect the books and records of the Association and the Declaration, Bylaws, and any Rules and Regulations during normal business hours, and to obtain copies thereof.
- (e) To be given notice by the Association of any substantial damage to any part of the Common Areas.
- (f) To be given notice by the Association if any portion of the Common Areas, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority. Whenever any Institutional Lender, guarantor or insurer desires the benefits of the provisions of this section requiring notice to be given or to be furnished a financial statement, such Institutional Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE XIV:

GENERAL PROVISIONS

Section 1. Applicability. The Properties, this Declaration, and other Governing Documents are subject to the ordinances, regulations, and rules of the County, and shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Declaration. There may be certain provisions of the Code that apply to all of the Properties and certain provisions of the Code that apply only to certain portions of the Properties (for example, provisions of the Code relating to private streets apply only to those portions of the Properties that contain private streets). It shall be the responsibility of the Association and each Owner of each portion of the Properties to comply with all provisions of the Code applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of this Declaration with respect to such portion of the Properties has been given by the Declarant or its authorized agent, the Board, any committee of

the Board, or any other Person who has the authority to give such approval, disapproval, waiver or variance.

Section 2. Conflicts.

- (a) Some or all of the Properties may be subject to the provisions of the Act. To the extent that Properties are subject to the Act, the provisions of the Act control over any inconsistent provisions of this Declaration, any Annexation Declaration, or any other Governing Documents.
- (b) The provisions of the Code control over any inconsistent provisions of this Declaration, any Annexation Declaration, or any other Governing Documents. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Declaration and all Annexation Declarations are deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Properties or any part thereof. Provided, however, any provision of this Declaration or any Annexation Declaration that is more restrictive than an applicable provision of the Code (for example, a building setback distance required by this Declaration or an Annexation Declaration that is greater than that required by the Code) is not an inconsistent provision of this Declaration unless the Code specifically provides otherwise and is not deemed revised to conform to the Code.
- (c) The provisions of this Article control over any inconsistent provisions of any other portion of this Declaration, any Annexation Declaration, or any other Governing Documents.
- (d) The provisions of this Declaration control over any inconsistent provisions of any other Governing Documents, except as to matters of compliance with the North Carolina Nonprofit Corporation Act, in which event the Articles shall control.

Section 3. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Duration of Declaration. The Covenants and Restrictions of this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Section 6. Amendment of Declaration. This Declaration may be amended by Declarant with no other consent, until such time as Declarant no longer owns Property or at least (1) Lot within the Subdivision. After Declarant has sold its last Lot or conveys property by Deed to the Association, this Declaration may only be amended by the written agreement or vote of not less than sixty-seven percent (67%) of the Lot Owners. Amendments to this Declaration are valid from the later of the time of recording in the Registry or such later date specified in the amendment. When County approval of an amendment is required by the Code or by a provision of this Declaration (including this Article), County approval shall be evidenced by the signature of the County Attorney or his/her Deputy on the recorded original or copy of the amendment. Any amendment of this Article or any other provision of this Declaration that requires County approval is void ab initio if recorded without the required County signature.

Section 7. Amendments Permitted Without Membership Approval. The following amendments may be affected by the Declarant, or the Board without consent of the Members:

- (a) Amendments, if necessary for the exercise of any development right, including, but not limited to, amendments to qualify the Association or the Properties, or any portion thereof, for tax exempt status, or to reflect any plat change to the Properties as permitted herein, or amendments, so long as the Class "B" Membership exists, that would allow the Declarant to change any provision of the Declaration or the Bylaws, which, in the sole judgment of the Declarant, tends to impair the development or marketing rights of the Declarant or Builders under the Declaration or the Bylaws, or interferes with the development of or construction on any portion of the Properties.
- (b) Amendments to correct any obvious error or inconsistency in drafting, typing or reproduction.
- (c) Amendments to conform to the requirements of any law or Governmental Entity having legal jurisdiction over the Properties or to qualify the Properties or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Properties, including, without limitation,

ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment is necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

Section 8. Indemnification. No immunity, exculpation or indemnification provision of this Declaration shall relieve one (1) or more Owners from its liabilities as an Owner under this Declaration and other Governing Documents.

Section 9. FHA/VA Approval. As long as there is a Class “B” Membership, and if Declarant determines to qualify this Property for Federal Housing Administration or Veterans Administration approval the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional property, dedication of Common Areas, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 10. Recordation. No Amendment shall be effective until recorded in the County in which the Property is situated.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

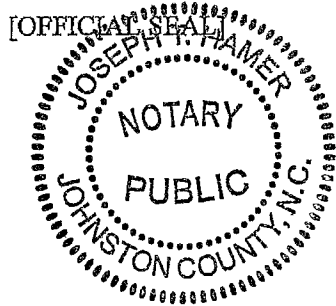
DECLARANT: STRICKLAND HINTON, LLC
a North Carolina limited liability company

By: [Signature]
Name: Reid M. Smith
Title: Manager

NORTH CAROLINA
COUNTY OF Johnston

I, the undersigned Notary Public of the aforesaid County and State do hereby certify that Reid M. Smith, personally appeared before me this day and acknowledged that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: STRICKLAND HINTON, LLC by Reid M. Smith, Manager.

Witness my hand and official stamp or seal this the 30th day of September, 20 22.



[Signature]
Notary Public
My commission expires: 5.3.23

EXHIBIT A

BEING ALL of Mill Stream Subdivision, as shown on a map entitled "Subdivision Plat of Mill Stream for Strickland Hinton, LLC" and recorded in Plat Book 95, Pages 304 through 305, Johnston County Registry, and as re-recorded in Plat Book 96, Pages 123 through 124, Johnston County Registry, to which reference is hereby made for certainty of description.