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After Recording Return To: R. Kenneth Helms, Jr. (ss)

CURRY PLACE

## RECITALS

B. Declarant intends to develop the Property under a common scheme and general plan for the improvement and maintenance thereof.

C. For this purpose, Declarant intends to subject the Property to the limitations covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth in this Declaration, for the benefit of the Property and the future owners thereof.

D. Plaintiff deems it desirable for the management and administration of the planned development to incorporate Curry Place Homeowner's Association, Inc. as a non-profit corporation under the laws of the State of North Carolina for the purposes of administering and enforcing the limitations, covenants, conditions, restrictions, easements, liens, charge(s), assessments and equitable remedies created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such other powers as may be authorized by this declaration, by law, or by its Articles of Incorporation and Bylaws.

E. Rick Duncan Construction, Inc. has been conveyed certain Lots and executes this document for the purpose of consenting to the covenants, conditions and restrictions set out herein.

**NOW, THEREFORE, Declarant hereby declares as follows:**

**ARTICLE 1**  
**DEFINITIONS**

The following terms shall have the following meanings when used in this Declaration:

1.01. Articles. "Articles" means the Articles of Incorporation of the Association, including any amendments thereto,

1.02. Association. "Association" means Curry Place Homeowner's Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

1.03. Board, "Board" means the Board of Directors of the Association.

- 1.04. Builder. "Builder" means any person or firm in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale on the Property.
- 1.05. Bylaws. "Bylaws" means the Bylaws of the Association, including any amendments thereto.
- 1.06. Common Area. "Common Area" means all real property owned by the Association for the common use and enjoyment of its Member, but does not include real property over which the Association has only an easement.
- 1.07. Completion of Sales. "Completion of Sales" means the earlier of (1) conveyance of all portions of the Property to purchasers other than a successor Declarant hereunder or (2) twenty (20) years from the closing of the first sale of a Lot to a purchaser other than a Builder or a successor Declarant hereunder; provided, however, if Declarant is delayed in developing the Property, constructing improvements or selling Lots and dwellings due to strikes or work stoppages, shortages of materials, supplies, fuel, power, or energy, moratoria or suspensions on issuance of land use permits and approvals or affecting the availability of water, sewer, power or other utilities or necessary services, inclement weather, civil strife, major disaster or other cause beyond Declarant's reasonable control, said twenty (20) year period shall be extended by the period of any such delay.
- 1.08. County. "County" means Union County in the State of North Carolina.
- 1.09. Declarant. "Declarant" means Curry Place, Inc. a North Carolina corporation, and any successor or assign to whom Declarant assigns its rights and interests as Declarant hereunder in whole or in part by instrument recorded in the official records of the County.
- 1.10. Declaration. "Declaration" means this Declaration and all amendments or supplements hereto.
- 1.11. Lot. "Lot" means any numbered single family lot or plot of land, together with any improvements thereon, as shown upon any recorded final subdivision map covering the Property or a part thereof, which is not a dedicated street or Common Area.
- 1.12. Member. "Member" means a member of the Association.
- 1.13. Mortgage. "Mortgage" means a mortgage or deed of trust which constitutes a lien upon a Lot given to a bank, savings and loan association or other lender for the purpose of securing indebtedness incurred to purchase or improve a Lot. A mortgage or deed of trust on a lot given for any other purpose shall not entitle the mortgage to the same privileges as a mortgage described in Section 1.14 below.
- 1.14. Mortgagee. "Mortgagee" means the holder of the beneficial interest in any Mortgage or Deed of Trust described in Section 1.13 above.
- 1.15. Notice and Opportunity for Hearing. "Notice and Opportunity for Hearing" means giving at least fifteen (15) days prior notice of a proposed action and the reasons therefor, and of an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.
- 1.16. Owner. "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, and shall include Declarant and Builder as to any Lot owned by Declarant or Builder unless otherwise qualified herein. "Owner" shall not include any person or entity who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.
- 1.17. Person. "Person" means an individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.
- 1.18. Property. "Property" means the real property described on Exhibit A hereto.
- 1.19. Rules and Regulations. "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been given to owners in accordance with the requirements of this Declaration.
- 1.20. Substantial Completion. "Substantial Completion" means that the improvement in question has been constructed to such an extent that it can be used for its intended purpose.
- 1.21. Town. "Town" means the Town of Stallings in Union County, North Carolina.

1.22. Voting Power. "Voting Power" means the total number of votes held by all Members (and if there is more than one class of Members, the total of each class of Members) whose membership at the time the determination of voting power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting. All voting specifications and requirements shall apply to the entire Property.

1.23. Permit. "Permit" shall mean and refer to that Special Use Permit (Conditional Use) approved by the Town Council on the 12<sup>th</sup> day of November, 2002.

#### ARTICLE 2

#### SUBMISSION AND TERM

2.01. Submission. The Property shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein, all of which are declared to be (i) in furtherance of a common scheme and general plan for the development, improvement and maintenance of the Property and (ii) for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Property. All of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein shall run with, be binding upon and inure to the benefit of the Property, shall be binding on and inure to the benefit of each and every person having or acquiring any right, title or interest in the Property, shall be binding upon and inure to the benefit of the successors in interest of such persons, and shall inure to the benefit of the Association, its successors and assigns.

2.02. Incorporation of Declaration Into Instruments. Any deed or other instrument by which a Lot is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, whether or not the deed makes reference hereto.

2.03. Term. This Declaration shall remain in force for a term of twenty (20) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years, unless sooner terminated by the affirmative vote of seventy-five percent (75%) of the total Voting Power of the Association and the written consent of seventy-five percent (75%) of the Mortgagees.

2.04. Additional Subdivision Sections. The Developer or its successor may add additional sections constituting portions of the Property by the execution and recording of Supplemental Declarations referring to this document and describing the additional section or sections. Upon recording, the additional section or sections shall become subject to these Declarations, as if the same had been originally included, in all respects.

#### ARTICLE 3

#### COMPLIANCE WITH MANAGEMENT DOCUMENTS

3.01. Compliance with Declaration and Other Documents. Each Owner, resident or tenant of a Lot shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations duly adopted by the Association, decisions and resolutions of the Association and its duly authorized representative, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages, unpaid assessments, or for injunctive relief, including reasonable attorney fees.

3.02. Resolution of Conflicts Between Documents. Each Owner covenants and agrees that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and Rules and Regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles and this Declaration, then, the provisions of this Declaration shall prevail. In the event that anything shown on a recorded final subdivision map for all or any portion of the Property is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail. If a dispute arises among Owners in regard to the administration of the Property, then the provisions of this Declaration shall prevail.

3.03. Town of Stallings Zoning Code. The provisions of the zoning code for the Town of Stallings and any amendments thereto and the conditions and requirements set forth in the Permit shall at all times be paramount to the provisions of this Declaration and in the event of a conflict, the said zoning code shall be controlling over the Declaration.

ARTICLE 4  
PROPERTY RIGHTS

4.01. Common Area Easements. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area and of access to and from his Lot over any streets comprising a portion of the Common Area (if any), which rights and easements shall be appurtenant to and shall pass with the title to his Lot and subject to the following rights and restrictions:

(A) The right of the Association, after Notice and Opportunity for Hearing, to limit the number of guests of an owner, to charge reasonable admission and other fees for the use of the Common Area facilities, if any, and to limit the use of said facilities to Owners who occupy a residence on the Property.

(B) The right of the Association to suspend the right of an Owner to use the Common Area facilities (1) for any period during which a fine against a Member or any assessment against such Owner's Lot remains unpaid; and, (2) after Notice and Opportunity for Hearing, for a period not to exceed ninety (90) days for any infraction of the Rules and Regulations.

(C) The right of the Association to grant easements and to dedicate or otherwise convey all or any part of the Common Area as provided in this Declaration.

(D) The right of the Association to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes, subject to the approval of Members and Mortgagees as otherwise provided in this Declaration.

(E) The right of the Association to adopt Rules and Regulations governing use and enjoyment of the Common Area; and

(F) Easements for ingress, egress, use and enjoyment over, in, to and throughout the Common Area for the benefit of Declarant or any successor Declarant.

4.02. Delegation. Any Owner may delegate his rights of use and enjoyment of the Common Area and any facilities thereon to the members of his family or household residing on his Lot and to his guests and invitees while he is in possession of his Lot, subject, however, to reasonable restrictions imposed by the provisions of this Declaration, the Bylaws and the Rules and Regulations. Guests and invitees shall not be permitted on the Common Area unless the Owner or household member delegating his rights of use and enjoyment is physically present to accompany such guests and invitees while they are on the Common Area. Provided the notice required by Section 4.03 of this Declaration has first been given to the Association, a tenant of an Owner, while residing on such Owner's Lot, shall be entitled to use and enjoy the Common Area and any facilities thereon and to delegate rights of use and enjoyment in the same manner as if such tenant were the Owner of such Lot. No such delegation shall release an Owner from his obligations hereunder, including, without limitation, the obligation to pay regular and special assessments. Upon request, each Owner or tenant shall notify the Secretary of the Association of the names of all persons to whom such Owner or tenant has delegated any rights of use and enjoyment of the Common Area and the relationship that each such person bears to such Owner or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as the rights of Owners.

4.03. Tenants.

(A) Any Owner who rents or leases his Lot to a tenant shall not be entitled to use and enjoy any recreational or other common facilities on the Common Area during the period the Lot is occupied by such tenant.

(B) No Owner shall lease or rent less than an entire Lot and no more than one family (not related by blood or marriage) shall live in any one Lot. Except as provided in Section 7.20, the Lots shall not be leased or rented for hotel or transient purposes and no rental agreement or lease shall be made for a period of less than sixty (60) days. Subject to the foregoing restrictions, Owners shall have the right to lease or rent their Lots, provided that any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of this Declaration, the Bylaws, and the Rules and Regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of this Declaration, the Bylaws, and the Rules and Regulations.

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(C) In the event an Owner shall rent or lease his Lot such Owner shall immediately give to the Association in writing:

- (1) the name of the tenant and the Lot rented or leased;
- (2) the current address of such Owner;
- (3) a true and complete copy of the lease or rental agreement; and
- (4) the certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, the Bylaws and the Rules and Regulations and that such tenant has been advised of any obligations he may have thereunder as a tenant.

(D) In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.

4.04. Reciprocal Easements. There shall be reciprocal appurtenant easements between each Lot and such portion or portions of the Common Area as may be adjacent thereto and between adjacent Lots for the flow of rainwater from gutters and downspouts; provided, however, that no such easement shall unreasonably interfere with the use and enjoyment of the Common Area or any adjacent Lot. If any Common Area or Lot encroaches upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed, reconstructed or repaired in accordance with the provisions of this Declaration, including a driveway, an easement for the encroachment and for its maintenance shall exist to a distance of not more than one (1) foot as measured from any point on the common boundary between the Common Area and the Lot or between Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, that in no event shall such an easement exist for willful encroachments. If any Lot encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Property, an easement for the encroachment and for its maintenance shall exist so long as it remains.

4.05. Utility Easements. A perpetual easement is reserved over each lot as shown on all recorded subdivision maps of the Project for installation, maintenance, use or repair of public (or quasi-public) utilities, cable television or public (or quasi-public) storm drainage. All easements for installation, maintenance, use or repair of public (or quasi-public) utilities, cable television or public (or quasi-public) storm drainage facilities which are dedicated on any final subdivision map of the Property shall be kept free of buildings and within such easements no structure shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, use or repair of such public (or quasi-public) utilities, cable television or drainage facilities, or which may damage, interfere, or change the direction or flow of drainage in the easements. Any portion of a Lot which shares a berm with the Common Area shall be subject to an easement in favor of the Association for landscaping, moving and maintenance of the berm. All such easements at all times shall be accessible to Declarant until the Property is completed and at all times shall be accessible to all persons installing, repairing, using or maintaining such utilities, cable television and drainage facilities. The easement area for each Lot and all improvements in it shall be maintained continuously by the Owner of such Lot, except for those improvements for which a public (or quasi-public) authority or utility company is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over unsold Lot(s) for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

4.06. No Subdivision of Lots; No Time Sharing. There shall be no further subdivision or partition of any Lot nor shall any Owner or any other person acquiring any interest in a Lot seek any partition or subdivision thereof. There shall be no time-sharing or other co-ownership which allows multiple Owners sequential possessory interests in a Lot.

4.07. Sale of Common Area. Except as otherwise provided in this Declaration and the permit, no sale, transfer, dedication, hypothecation, partition, subdivision, abandonment, release or alienation of the Common Area shall occur or be valid, whether by act or omission of the Association, without the vote or written consent of sixty-seven percent (67%) of the total Voting Power of all Members.

4.08. Rules and Regulations. The Board shall have the right to write, amend, supplement, adopt, publish and enforce Rules and Regulations governing the Property, the use and enjoyment of the Common Area and any facilities thereon, and the personal conduct thereon of the Owners, their guests, invitees, members of their families or households and tenants. The Members may amend any such Rules and Regulations adopted by the

Board at any regular or special meeting of Members called for such purpose by (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of each class of Members of the Association, or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Association. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant or Builder (or have an adverse impact on Declarant or Builder or upon the sale of Lots or the construction of improvements thereon), and must be consistent with this Declaration, the Articles and the Bylaws.

4.09. **Enforcement.** The Association shall have the right, after Notice and Opportunity for Hearing, to levy fines for infraction of the provisions of this Declaration or the Rules and Regulations, provided (i) the Member shall have been warned in writing of a previous infraction within the preceding one (1) year, and (ii) the fine conforms to the provisions of Section 9.11.

#### ARTICLE 5

#### COMMON AREA EASEMENTS AND RIGHTS OF WAY, ENCUMBRANCES

5.01. **Dedications.** The Association shall have the power to grant easements in, on, over, through, and across the Common Area for any public or quasi-public improvements or facilities and their appurtenances, including, without limitation, street, sewer, drainage, water, gas and sprinkler improvements and facilities, provided (i) any such easement does not unreasonably interfere with the use and enjoyment of the Common Area or any Lot and (ii) the prior written consent of Declarant shall be obtained so long as Declarant owns any Lot. If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to said Lot Owner's easement. Each Owner, by accepting a deed to a Lot, expressly grants to the Association an irrevocable power of attorney for the purpose of granting easements in, on, over, through and across the Common Area. The President or other duly designated officer of the Association may execute, acknowledge and record in the official records of the County a certificate stating that the Board is the attorney in fact for the Owners for the purpose of such grant and that such power of attorney is properly exercisable in accordance with this Declaration. The acts of the Board in exercising its power of attorney shall be conclusively binding on all Owners. The power of attorney herein granted shall include authority to do such acts incidental to such grant and to incur such expenses as may be necessary or convenient in connection therewith. The Board, by resolution, shall instruct the appropriate officers of the Association to make, execute and deliver on behalf of any owner, as his interest may appear, any and all instruments, certificates and documents, including but not limited to, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be deemed necessary or convenient for such dedication or grant.

5.02. **Encumbrances.** The Association shall have the right to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes upon the vote or written consent of sixty-seven percent (67%) of the total Voting Power of all Members.

#### ARTICLE 6

#### COMMON AREA AND LOT MAINTENANCE

6.01. **Maintenance by Association of Common Areas.** The Association shall maintain and keep in good repair the Common Area and all improvements located thereon. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and grass areas, driveways, sidewalks and other improvements situated in the Common Area, if any. The Association shall maintain and keep in good repair all landscaping and grass areas within the boundaries of Lots. The Association shall maintain and keep in good repair all water and sewer lines serving more than one (1) Lot, even though located partially or wholly within the boundaries of a Lot.

The Association may contract with the local electrical power utility for the installation and thereafter continuous operation of decorative streetlights to be located within the public streets on the Property and such fees charged by the utility shall be paid from the annual assessments.

6.02. **Maintenance by Association of Improvements Upon Lots.** The Association shall maintain the grassed lawn and landscape plants required by the Association upon all lots within the subdivision, unless otherwise herein specified. The Association shall repair, replace and care for roof shingles (but excluding maintenance, repair or replacement of other portions of the roof) for each single-family detached and attached residential dwelling. The Association shall maintain the paint on all exterior columns for each single-family detached and attached residential dwelling. The Association shall also contract with a termite control company to provide termite inspections and treatment for each single-family detached and attached residential dwelling.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, lessees or their family members, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. The Association is hereby granted an easement and right of access to go upon any Lot for performance of repairs or maintenance for which the Association is responsible hereunder.

6.03. Maintenance by Owners. Except as provided in Section 6.01 and 6.02 of this Article 6, above, all maintenance of the improvements on the Lot shall be the responsibility of the Owner thereof. Except as provided in Section 6.01 and 6.02 of this Article 6, Each Owner shall maintain, repair and replace, at his expense, all exterior and interior portions of the improvements on his Lot which shall need repair, including gutters, downspouts, and the outermost surfaces of buildings, including the painting of entry doors and the repair of siding, repair and replacement of entry doors and garage doors and their apartment hardware, repair of wall sheathing, all exterior glass including windows and patio doors, bathroom and kitchen fixtures, light fixtures and other electrical or plumbing equipment, pipes and fittings serving an Owner's Lot. Each Owner is responsible for the maintenance, repair and replacement of all utility lines, pipes and cables serving such Owner's Lot, regardless of whether such utility lines, pipe or cable is located on such Owner's Lot or upon Common Area adjacent to such Owner's Lot. Further, each Owner shall repair, maintain and replace, at his own expense, when necessary, the heating and air-conditioning systems servicing his single-family detached or attached residential dwelling, whether located on his Lot or the Common Area adjacent to his Lot. Each Owner shall be responsible for pest control.

In the event that the Board of Directors of the Association determines that (a) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees or invitees, and is not covered or paid for by insurance, in whole or in part, then the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement, at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair or replacement; or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement at Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

6.04. Party Walls. Attached residential dwellings shall be built on Lots 62 through 77 of Curry Place, Phase I, as shown on the recorded plat.

(a) General Rules of Law to Apply. This section shall apply only to said lots and any additional attached residential dwelling lots in subsequent phases. Each wall which is built as a part of the original construction of the homes upon said lots and placed on the dividing line between said Lots comprising the attached residential dwellings, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply hereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance for a party wall shall be shared in equal shares by the Owners of the two (2) adjoining Lots utilizing such wall.

(c) Maintenance and Use of Party Walls. No party wall shall be altered or modified in any fashion, and the Owners of the two (2) adjoining Lots utilizing such party wall shall maintain such party wall as originally constructed. No Owner shall place a speaker or other sound amplification equipment within a party wall.

(d) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and the Owner of the other Lot adjoining such wall shall contribute one half of the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omission.

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

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

(g) Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

(h) Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner with whom such Owner shares a party wall to the extent reasonably necessary to perform repair, maintenance, or reconstruction of such party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the repairing Owner shall restore the adjoining Lot or Lots and Common Area to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

(i) Certification by Adjoining Property Owner that No Contribution is Due. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Section, request of the adjoining Owner a certification that no right of contribution exists, whereupon it shall be the duty of such adjoining Owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

6.05. Restoration of Casualty Loss. Subject to the requirements of Article 10 and of Section 14.02 of this Declaration, an Owner shall be responsible for the replacement and reconstruction of improvements on his Lot required because of damage or destruction by fire or other casualty and each Owner shall maintain, repair and replace the surface and subsurface drainage facilities and appurtenances located on his Lot as may be necessary to maintain good and proper drainage of the property and other real property in the vicinity, except for such facilities the maintenance of which has been assumed by the County or other governmental entity. If any Owner, after Notice and Opportunity for Hearing, fails to maintain, repair and replace such improvements, drainage facilities and appurtenances as required herein, the Association, at the expense of such Owner, shall maintain, repair or replace such improvements, drainage facilities and appurtenances at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a special assessment against such Owner to obtain reimbursement therefor as provided in Section 9.07.

6.06. Right to Enter. After reasonable notice to the occupant, the Association or its agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible or for the enforcement of this Declaration, and each Owner shall accept title to his Lot subject to such right of access of the Association or its agents.

## ARTICLE 7 USE RESTRICTIONS

In addition to the restrictions set forth in Article 13 below, the following apply to the Property:

7.01. Residential Use. Except as otherwise provided in this Declaration, each Lot shall be used solely for the construction and occupancy of a residence for a single family and for no other purpose. Except as provided in Section 7.20, no Owner shall use or cause or permit his Lot to be used for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose. No lot shall be used as a group home, half way house or any other similar use. No structure shall be erected, altered, placed or permitted to remain on any Lot exceeding two and one-half (2 1/2) stories in height, and a private garage for not more than two (2) cars and other outbuildings incidental to residential use of the Lot.

7.02. Unlawful Activity. No unlawful activity shall be conducted on any Lot or on any other part of the Property. Nothing shall be done on the Property that is an unreasonable annoyance, inconvenience or nuisance to the residents of the Property, or that unreasonably interferes with the quiet enjoyment of occupants of Lots. No doorways, walkways or streets shall be obstructed in any manner which would interfere with their use for ingress or egress in the event of fire, earthquake or other emergency.

7.03. Parking. Unless otherwise permitted by the Rules and Regulations no boat, trailer, recreational vehicle, camper, truck or commercial vehicle shall be parked, stored or left (a) on any undesignated part of the Common Area, (b) in any driveway or (c) on any other part of a Lot, (d) or otherwise on the Property unless the same are fully enclosed within the garage located on the Lot, or are kept behind the house on the Lot



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which fully hides them from the view of the public walking by such Lot or otherwise properly screened in accordance with the Rules and Regulations. Any such vehicle shall be parked, stored or left wholly within, in garage located upon the Lot, except to the extent same is already occupied to capacity, in which case such vehicle may be parked temporarily in the driveway once during any calendar month for not more than 24 consecutive hours. This restriction shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant and its agents and contractors in the conduct of their business prior to Completion of Sales. No boat, truck, trailer, pre-manufactured home, camper, recreational vehicle or tent shall be used as a living or dwelling area on the Property. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway on the Property, except in the case of emergency and except as may be permitted by the Rules and Regulations. No uninsured, wrecked or inoperable vehicles may be left on a Lot outside an enclosed structure. Each lot shall have a minimum concrete parking pad width of sixteen (16) feet by twenty-five (25) feet so as to accommodate two automobiles parked side by side. No vehicles shall be parked on the streets located on the property.

**7.04. Signs and Curtains.** No Owner shall place on or about any window any metallic foil or other coating, substance or material which acts as a reflector of light and no owner shall display, hang, store or use any signs, curtains, draperies, shades, stained glass or other articles whatsoever outside of the dwelling on any Lot so as to be visible from outside the Lot, excluding seasonal decorations and as may be permitted by the Rules and Regulations. Notwithstanding the foregoing, one professionally manufactured sign of not more than five (5) square feet advertising a Lot for sale or rent may be placed by the Owner on his Lot in such manner that it will be visible from outside the Lot. The prohibitions in this section shall not apply to Declarant or its agents, who may erect such signs as Declarant deems desirable to promote the sale of Lots.

**7.05. Antennas and Dishes.** No radio or television transmission or reception towers, antennas, dishes or disks shall be erected on any Lot, except that one dish or disk not exceeding two (2) feet in diameter shall be permitted subject to the following limitations: (a) dishes or disks may not be located in the area between the street right-of-way and the front corner of the house or, if a corner lot, in the area between the side street right-of-way line and the minimum building setback lines shown on the recorded plat, (b) dishes or disks must be screened from view from all public street rights-of-way, and (c) in all events the location of any dishes or disks and the proposed method of mounting and screening the same must be approved by the Board or architectural control committee, its successors or assigns prior to installation.

**7.06. Laundry.** No laundry or wash shall be dried or hung upon the exterior of any Lot or any place visible on the Property from outside such Lot.

**7.07. Fences.** No fence or wall shall be erected on any Lot closer to the street than the side street setback or the front of the building facade except for temporary decorative fencing installed by the builder on a model home. No fence or wall shall be erected on any berm of dirt which was placed along the side or rear lot line of any Lot by the Declarant. Privacy fencing around patios, decks or pools, not to exceed six (6) feet in height may be erected only with the prior approval of the Board or the architectural control committee. Perimeter fencing shall be picket fencing, shadow fencing (either vertical or horizontal), decorative metal or split-rail only, four (4) feet in height, and any other fencing, including chain link or other type of metal fencing, is expressly prohibited, except that metal fencing attached to the split-rail fencing may be used to contain animals within the yard with the prior approval of the Board or the architectural control committee. The spacing between the pickets of the perimeter fencing shall be not less than 11/2 inches and all such pickets shall be fastened on the exterior side of the fence. Decorative metal fencing must be approved by the Board or architectural control committee prior to installation.

#### **7.08. Pets.**

(A) No animals shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs, cats, et cetera, shall not exceed three (3) in number except for newborn offspring of such household pets which are under nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Property.

(B) The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that all animals be kept on a leash when in the Common Area and that animals be restricted to designated areas within the Common Area and that Owners are

responsible for cleaning up any mess that a pet creates within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing on the Property at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in Section 7.08(A).

7.09. Trash and Vegetation. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers located in an appropriate area screened and concealed from view. No weeds, vegetation, rubbish, debris, garbage, waste materials or materials of any kind whatsoever shall be placed or permitted to accumulate on any Lot or any portion of the Property which would render it unsightly, unsightly, offensive, or detrimental to any property in the vicinity thereof or to the Occupants of any property in such vicinity. Except as provided in Section 6.02, Grass, hedges, shrubs, vines and mass planting of any type on any Lot or any portion of the Property shall be kept trimmed by owner and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. Trees, shrubs, vines and plants which die shall be promptly removed. All trees or plantings shall be behind the sidewalk. If any Owner, after Notice and Opportunity for Hearing, fails to maintain such Owner's Lot in the manner provided by this Section 7.09 the Association, at the expense of such Owner, may take such steps as are necessary in order to remedy such condition including cutting and removing of weeds, vegetation, rubbish, debris, garbage, waste materials and other accumulations on any Lot at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a special assessment against such Owner to obtain reimbursement of the cost thereof as provided in Section 9.07.

7.10. Trees. The front yard of each lot shall contain at least one tree, each with a minimum caliper of one and one half inches measured at a height of six inches above ground. These trees will be planted at equal distance throughout the neighborhood measured from the back of the curb. Builders and owners shall be responsible for damage to these trees and replacement, if necessary, as to be determined by the Association.

7.11. Nuisance. No noxious or offensive activity shall be carried on in or upon any Lot or the Common Area nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Property or unreasonably interfere with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his Lot which would result in the cancellation of insurance on any other residence or any part of the Common Area or which would be in violation of any law.

7.12. Building Setbacks. No building shall be erected on any Lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Lot, no residence or other building shall be located nearer than the distance shown on the recorded map to the side street line. With respect to corner Lots, the front lot line shall be deemed the street line having the significantly shorter frontage, and any residence erected on such corner Lot shall face the front lot line. Provided, however, that this provision shall not be construed to authorize or permit encroachment of any structure on a Lot upon any easement shown on the recorded plat or reserved herein or upon any other Lot. This provision shall also not be construed to authorize any violation of the zoning provisions of the appropriate governmental authority.

7.13. Temporary Structures. Except as provided in Section 7.20, no residence of a temporary nature shall be erected or allowed to remain on any Lot, and no boat, truck, trailer, shack, tent, barn, detached garage, recreational vehicle or any other building or vehicle of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

7.14. Floor Space. The minimum heated floor area per each residence constructed upon a Lot shall be 1300 square feet

7.15. Unintentional Violations. In the event of the unintentional violation of any of the building line restrictions set forth herein, Declarant reserves the right, by and with the mutual written consent of the Owner of such Lot, to change the building line restriction set forth in the instrument, provided however, that such changes shall not be in violation of any provisions of the Zoning provisions of the appropriate governmental authority.

7.16. Above Ground Pools. No above ground pools shall be erected or installed on a Lot.

7.17. Architectural Requirements. The driveway and sidewalks on a Lot shall be constructed of concrete. The mailbox and paper holder on a Lot shall be uniform as specified by the Declarant. Lots shall be planted with standard size plantings along the front of the dwelling to screen the foundation. No above ground storage tanks shall be erected or installed on a Lot. No building shall be erected, placed, or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Declarant, its successors or assigns, as to quality of workmanship and materials, harmony of

external design with existing structures, and as to location with respect to topography and finish grade elevation. No dwelling erected on any Lot shall have exterior foundation or walls of cinder blocks, cement blocks, asbestos siding or artificial brick siding. All exterior walls shall be constructed of brick, stone, stucco, vinyl, hardboard or wood siding. No garage, carport, room, building, utility shed or similar structure customarily incident to the residential use of the Lots, whether attached or detached from the main dwelling, shall be erected, placed, altered or permitted to remain on any Lot unless the design, plans and location of the same shall have been approved in writing by the Declarant, its successors or assigns. If the Declarant fails to approve or disapprove such design, plans and location within thirty (30) days after receipt of written plans and specifications, then further approval will not be required but will be deemed to have been waived. Declarant shall be entitled to stop any construction in violation of these restrictions so long as Declarant owns any Lot or Lots within the Property. It is the intent that only site built dwellings shall be constructed. No single wide mobile homes, double wide mobile homes, or mobile homes of any kind or description, trailers, modular homes or manufactured homes of any description shall be constructed or placed on a lot.

7.18. Exercise Equipment. All swing sets, basketball goals and similar equipment must be located within the building setback lines and comply with the Rules and Regulations.

#### 7.19. Removal of Obstructions.

(A) The Declarant, its successors or assigns, without notice, may remove any obstructions of any nature located within road rights-of-way (including, but not limited to, trees, shrubs, fences, basketball goals and mailboxes) which, in the opinion of the Declarant, its successors or assigns, either might produce a hazard or might interfere with the ability or willingness of the State of North Carolina (or agency or department thereof) to take over the responsibility for maintenance of the roads.

(B) The Declarant, its successors or assigns, shall have the right, in its sole discretion, to charge back the actual cost to it of removing obstructions against the Lot Owner who directly or through his agents, contractors or invitees caused or permitted the obstruction to be placed in the road right-of-way, and such Lot Owner shall indemnify and save the Declarant, its successors or assigns, harmless from all liability, claims, damages and expense imposed upon the Declarant, its successors or assigns, at law or in equity, caused by or resulting from the placement of the obstruction in the road right-of-way. In the event that the Lot Owner responsible for such charge or liability as aforesaid fails and refuses, after demand by the Declarant, its successors or assigns, to pay said charge or liability, then the Declarant, its successors or assigns, shall have a lien against his Lot thereon and may enforce collection of the charge or liability, together with reasonable attorneys' fees, by any and all remedies afforded by law or in equity including, without limitation, the filing of a notice of lien and perfecting the same as by law provided, to the end that such charge or liability shall become a charge against the said Lot or dwelling unit.

7.20. Declarant's Rights. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, Declarant, its agents, employees and contractors shall not be restricted or prevented by this Declaration from doing, and Declarant, its agents, employees and contractors shall have the right to do such things or take such actions as they deem necessary, advisable or convenient for completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots. In the event of any conflict between a Builder and Declarant, the Declarant will be the prevailing party. The rights of Declarant or Builder, their agents, employees and contractors shall include, without limitation:

(A) The right and easement of ingress in, over and upon the Common Area for the purpose of performing on any part or parts of the Property acts deemed necessary, advisable or convenient for the completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots;

(B) The right to erect, construct, maintain, demolish or remove structures and other improvements on any Common Area as they deem necessary, advisable or convenient for the completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots; and

(C) The right to use Lots and improvements owned by Declarant or Builder as models, sales offices and contractor's offices and to construct and display promotional, informational and directional signs and other sales aids on or about any portion of the Project.

The rights of Declarant and, to the limited extent set forth herein, Builder under this section shall terminate not later than one (1) year after the Completion of Sales. Amendment of this section shall require an affirmative vote of 75% of the Class A Members and the consent of the Declarant, provided after Completion of Sales, consent of the Declarant is not required but is subject to the Permit or the zoning laws of the Town.

7.21. Right to Enter. Any governmental agency, including, but not limited to the County, its agents, and employees, shall have, the right of immediate access to the Common Area at all times if necessary for the preservation of public health, safety and welfare.

#### ARTICLE 8

##### MEMBERSHIP AND VOTING RIGHTS

8.01. Governing Body. The Association shall be the governing body for all owners with respect to the management, administration, maintenance, repair and replacement of the Property, as provided by this Declaration and the Bylaws.

8.02. Membership. Membership in the Association shall be composed of and limited to Owners. Each Owner, including Declarant, shall automatically be a Member of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Upon termination of ownership, an Owner's membership shall automatically terminate and be automatically transferred to the new Owner of the Lot.

8.03. Voting. The Association shall have two classes of voting membership.

Class A. Class A Members shall be all Owners with the exception of Declarant and Builder, provided, however, that Declarant shall become a Class A Member when its Class B membership ceases as provided hereinafter and Builder shall become a Class A Member 120 days from the time a residence constructed on a Lot is issued a certificate of occupancy. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an ownership interest in any Lot, all such persons shall be Members, but no more than one vote shall be cast with respect to any Lot. The vote for any such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves. In the event of disagreement, the decision of Members holding a majority of interest in such Lot shall govern. Unless otherwise notified by a co-owner as to a dispute between the co-owners regarding their vote prior to the casting of that vote, the vote of any co-owner shall be conclusively presumed to be the majority vote of the Owners of that Lot.

Class B. Declarant shall be a Class B Member. Declarant shall be entitled to three (3) votes for each Lot owned including each lot as shown on said plats referenced hereinabove (a total of 81 Lots) and any additional lots that may be added in subsequent phases. Declarant's Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier:

(1) when the total number of votes of the Class A Members equals the total number of votes of the Class B Members; provided, that the Class B membership shall be reinstated with all rights, privileges and responsibilities, if after conversion of the Class B membership to Class A membership hereunder, additional land containing Lots is annexed to the existing property; or

(2) on December 31, 2024; or

(3) when Declarant, at its option, so determines.

8.04. Commencement of Voting Rights. Voting rights attributable to an ownership interest shall not vest until the assessment against that interest has been levied by the Association as provided in Article 9; provided, however, that voting rights shall be immediately vested with respect to amendments to this Declaration pursuant to Section 15.08. Declarant's voting rights as set out herein shall vest upon the filing of this Declaration.

8.05. Declarant's Voting Rights. No requirement for the approval of a prescribed majority of the Voting Power of Members of the Association other than Declarant for action to be taken by the Association is intended to preclude Declarant from casting votes attributable to Lots owned by Declarant.

8.06. Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any person, whether or not an Owner, on the Board of Directors of the Association and any officer or officers of the Association until ninety (90) days after the first of the events to terminate by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if it then owns one or more Lots, and a special

meeting of the Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Association as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section.

#### ARTICLE 9

##### COVENANTS FOR ASSESSMENTS

9.01. Covenant to Pay Assessments, Lien. Every Owner of any Lot (excluding Declarant and Builder, except as provided herein) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay, to the Association such regular annual assessments or charges and such special assessments or charges as may be levied by the Association pursuant to the provisions of this Declaration. No assessment shall be due except with respect to Lots shown on a recorded subdivision plat. The amount of any such annual or special assessment plus any other charges thereon, such as interest, late charges and costs (including attorney's fees), as such may be provided in this Declaration, shall be and become a lien upon the Lot assessed when the Association causes to be recorded in the official records of the County a notice of assessment, which notice shall state:

- (A) The amount of such assessment and such other charges thereon as may be authorized by this Declaration;
- (B) A description of the Lot against which the same has been assessed; and
- (C) The name of the record owner of the Lot assessed.

Such notice shall be signed by an authorized representative of the Association. Upon payment of such assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association, at the Owner's cost and expense, shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. The lien provided for herein shall be prior to all other liens recorded subsequent to the recording of such notice of assessment. The lien may be enforced by foreclosure in accordance with North Carolina law, or in any, other manner permitted by law. The Association shall have power to purchase the Lot at a foreclosure sale and to hold, lease, mortgage and convey the same.

9.02. Personal Obligation. Each regular annual or special assessment, together with any late charges, interest, collection costs and reasonable attorney's fees, shall be the personal obligation of each person or entity, other than any Mortgagee, who hold an ownership interest in the Lot at the time such assessment was levied. If more than one person or entity held an ownership interest in the Lot at such time, the personal obligation to pay such assessment or installment respecting such Lot shall be both joint and several. No Owner may exempt himself from payment of assessments, or installments, by waiver of the use or non-use of common facilities within the area or of any other portion of the Common Area or by abandonment or leasing of his Lot.

9.03. Use of Assessments. Regular annual or special assessments paid by Owners shall be used to pay for operation, maintenance, preservation, enhancement, repair and improvement of the Common Area, other purposes reasonably related to the foregoing, and to promote the recreation, health, safety and welfare of the Owners. In addition, such assessments shall be used to pay the cost of administration of the affairs of the Association, including payment of applicable taxes, and for the preservation of the Association's existence, to the extent properly allocable to the performance and exercise of the Association's duties and powers under this Declaration. The foregoing is intended as an authorization to the Association and shall not be construed to require expenditure of Association funds for any particular purpose.

9.04. Reserve Funds. Upon the transfer of record title to a Builder, Builder shall pay a one time assessment of \$75.00 which shall be used for Common Area replacements and maintenance, other than ordinary maintenance. Beginning on September 1, 2003 and for each subsequent year, the Board shall adopt a budget to provide funds to be placed in reserves in an amount to be determined by the Board. Funds deposited in reserve for a particular purpose shall be held for that purpose and shall not be expended for any other purpose without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the total Voting Power of the Association, except that if the Board determines that funds held in reserve for a particular purpose exceed an amount reasonably required as a prudent reserve for that purpose, then, without the vote or written consent of Members, the excess may be allocated to any other reserve fund

established by the initial budget of the Association and expended for the purpose for which such other reserve fund has been established.

#### 9.05. Regular Assessments.

Beginning September 1, 2003 the regular annual assessment for each Lot for the first assessment year (the assessment year shall be the calendar year) shall be Eight Hundred Forty and No/100 Dollars (\$840.00) per Lot owned by an Owner, (excluding Declarant and Builder, unless Builder has become a Class A Member as set out in 8.03 above). If the first assessment year shall have fewer than twelve (12) months, the foregoing amounts shall be proportionately reduced. Said assessment shall be due immediately upon the transfer of record title to the Owner and thereafter as the Board shall fix as set out below.

The Board shall fix the amount and due date of the regular annual assessment on a yearly basis at least fifteen (15) days in advance of each assessment year provided that the Board may not impose a regular annual assessment which is more than ten percent (10%) greater than the regular assessment for the immediately preceding fiscal year without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members of the Association or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the Voting Power of the Association. Written notice of the regular annual assessment shall be sent to every Owner who is not present at the time the regular annual assessment is so fixed. If the Board fails to so fix the regular annual assessment, the assessment applicable for the previous assessment year shall remain in effect until the Board shall fix a new regular annual assessment. Regular annual assessments shall be payable annually on the first day of each January or at such other time as the Board may fix. The Association shall, upon demand, and for a reasonable charge, furnish to any person having a legitimate interest a certificate signed by an officer of the Association stating whether the regular annual assessment and special assessments, if any, on a specified Lot have been paid and, if not, the amount due.

9.06. Special Assessments. In addition to the regular annual assessments authorized herein, the Board may levy, in any assessment year, a special assessment against all Owners, excluding Declarant and Builder unless Builder has become a Class A Member as set out in 8.03 above, applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements and related fixtures and personal property on or comprising a part of the Common Area, provided in any fiscal year, special assessments which exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may not be levied without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members of the Association or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the total Voting Power of the Association.

9.07. Assessment as Kennedy. After Notice and Opportunity for Hearing, the Board, without the vote or written consent of Members, may levy a special assessment against an Owner as a remedy to reimburse the Association for costs (including attorneys' fees) incurred in bringing the Owner, his Lot or his residence into compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations.

9.08. Allocation of Assessments. Except as otherwise provided in this Declaration all regular and special assessments shall be levied equally against all Owners, except Declarant or Builder.

9.09. Commencement of Assessments. The regular annual assessments provided for herein shall commence as to all Lots at the discretion of the Board, but not later than January 1, 2000. The first assessment year shall be the period commencing on the date regular annual assessments commence and ending on the December 31 next following. The regular annual assessment for the first assessment year shall be prorated from the amounts fixed by the Board for a full twelve-month year, based on the number of months to be contained in the first assessment year. Subsequent assessment years shall be each successive calendar year; provided, however, that at any time the Board may change the assessment year to correspond to a fiscal year selected by the Board.

9.10. Revised Assessments. Subject to the provisions of Section 9.05, if at any time during the course of any year the Board shall deem the amount of the regular annual assessment to be inadequate or over adequate by reason of a revision of its estimate of either expenses or income or otherwise, the Board shall have the right, at a regular or special meeting, to revise the regular annual assessment for the balance of the assessment year. Any such revised assessment shall become effective on the first day of the month next following the date of adoption, and additional amounts payable shall be due (or refunds of overages shall be made by the Association) at such time as determined by the Board.

9.11. Delinquent Assessments, Fines. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. The Board may require that any delinquent assessment bear a late charge to cover administrative expenses incurred as a result of the late payment of the assessment. Late charges on delinquent assessments and fines levied as provided in Section 4.09 shall not exceed the following rates compounded and computed on the outstanding balance, which shall include any late charges previously assessed and unpaid, from month to month:

(A) On so much of the outstanding balance as does not exceed one thousand dollars (\$1,000), one and one-half percent (1.5%).

(B) If the outstanding balance is more than one thousand dollars (\$1,000), one percent (1%) on the excess over one thousand dollars (\$1,000) of the outstanding balance.

(C) If the late charge so computed is less than twenty-five dollars (\$25) for any month, twenty-five dollars (\$25).

No charge may be imposed more than once for the delinquency of the same payment, provided, however, that the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. When an assessment is paid more than fifteen (15) days after the due date of the assessment, late charges shall accrue from the first day following the due date of the assessment. The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment or fine and, after Notice and opportunity for Hearing, the Association may suspend a delinquent Owner's membership rights in the Association while the assessment or fine remains unpaid. In any legal action to enforce payment of an assessment or fine, the Association shall be entitled to recover interest, costs and reasonable attorney's fees. In the event an attorney is employed to collect payment, a legal fee shall be considered reasonable as follows: (i) if collection is made after a single contact by the attorney: \$300.00; (ii) if suit is filed: \$600.00; (iii) if judgment is obtained by default: \$800.00; (iv) if judgment after trial, in the discretion of the Court.

# ARTICLE 10 INSURANCE

## 10.01. Duty to Maintain Insurance.

(a) Coverage by Owners. Each Owner shall procure and maintain fire and extended coverage insurance on his or her single-family detached or attached residential dwelling, and, upon request, shall provide the Association with proof of such coverage:

- (i) Each single-family detached or attached residential dwelling and other improvements upon a Lot shall be insured in an amount equal to one hundred percent (100%) of their replacement value. Such coverage shall provide protection against (a) loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief and (b) such other risks from time to time as are customarily covered by homeowners fire and extended coverage policies.

Such policies shall contain clauses providing form waiver of subrogation.

- (ii) Liability. Each Owner shall procure and maintain homeowner's liability insurance in an amount as is customary but in no event less than Three Hundred Thousand and No/100 Dollars (\$300,000.00).

All such policies shall name the Association as an additional insured as its interest appears and copies of said policies and renewals thereof shall, upon request, be furnished to the Association. Upon failure by any Owner to obtain and pay the premium for a policy insuring the Owner's residence and improvements, the Association may, but is not required to (and shall have no liability to any Owner or other party for failure to) obtain the policy and pay the premium thereof, and shall bill such Owner for such premium amount as an individual assessment against such Owner.

Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

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(b) **Common Area Coverage by Association.** All buildings and improvements upon the Common Area and all personal property of the Association included in the Common Area or otherwise owned by the Association shall be insured in an amount equal to one hundred percent (100%) of their insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

- (i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;
- (ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and
- (iii) Such policies shall contain clauses providing for a waiver of subrogation.

All insurance policies upon the Common Area shall be purchased by the Association for the benefit of all the Association and the Owners and their mortgages as their interest may appear, and provisions shall be made for the issuance of mortgage endorsements to the mortgages of Owners.

(c) **Association Liability Coverage.** Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and No/100 (\$1,000,000.00) Dollars per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner, the Association, its directors and officers. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.

(d) **Premiums.** Premiums for insurance policies purchased by the Owners shall be paid directly by each Owner to the insurance company providing coverage. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the annual assessment described herein.

(e) **Proceeds of Association Policies.** All insurance policies purchased by the Association shall be for the benefit of the Association, the Owners and their mortgages, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgages in the following shares:

- (i) Proceeds on account of damage to Common Area and facilities are to be held for the Association.
- (ii) If, due to insured casualty occurring on the Common Area, proceeds are payable on account of damage to Lots, such proceeds shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damages suffered by each Owner, which cost shall be determined by the Association.
- (iii) In the event a mortgage endorsement has been issued for any Lot, the share of the proceeds of the Owners shall be held in trust for the mortgage and the Owners as their interests may appear.
- (f) **Subrogation.** Each insurer shall waive its right to subrogation under any policy maintained pursuant to the provisions herein against any Owner or member of Owner's household.
- (g) **Act or Omission of Owner.** No act or omission of any Owner, unless such Owner is acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under any of the policies maintained pursuant to the provisions herein.
- (h) **Other Insurance.** If, at the time of a loss, there is other insurance in the name of an Owner covering the same risk covered by the Association's policy, the Association's policy shall provide primary insurance.
- (i) **Issuance of Certificates; Cancellation.** Any insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurer issuing an insurance policy under this Section may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.



Section 1. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefor.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs to the Common Area and, if applicable due to insured casualty occurring on the Common Area, proceeds on account of damage to Lots shall be paid to defray the cost of repair to the Lots. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners as provided in Section 16(k).

Section 2. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated. Premiums for such insurance shall be included as part of the annual assessment described herein.

Section 3. Obligation to Rebuild. Should any portion of a single-family detached or attached residential dwelling be damaged or destroyed, the Owner of such dwelling shall repair or replace it promptly in accordance with the original construction plans and specifications unless (i) the planned community and this Declaration are terminated or (ii) repair or replacement would be illegal under any state or local health, environmental or safety statute or ordinance. The cost of repair or replacement of said dwelling, or of any other improvements on a Lot, in excess of the proceeds of insurance, is the sole responsibility of the Owner of such damaged dwelling and other improvements. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the planned community and this Declaration are terminated, (ii) repair or replacement would be illegal under any state or local health, environmental or safety statute or ordinance or (iii) each Class of Owners decides at a duly called meeting not to rebuild by an eighty percent (80%) or more vote of each Class of Owners. The cost of repair or replacement of Common Area in excess of insurance proceeds and reserves is a common expense. If any portion of the Common Area is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Property and (ii) the remainder of the proceeds shall be retained by the Association as part of its reserve fund.

#### ARTICLE 11

##### DAMAGE AND DESTRUCTION

11.01. Damage to Lots. Subject to the provisions herein, restoration and repair of damage to any Lot and improvements thereon shall be made by and at the expense of the Owner thereof.

11.02. Repair, Restoration, Reconstruction. If damage occurs, the Association shall promptly contract for the repair, restoration or reconstruction of the Common Area or improvements which have been damaged or destroyed and apply any proceeds of insurance as received toward cost of such repair, restoration or reconstruction. The difference, if any, between the insurance proceeds payable by reason of such damage and the cost of such repair, restoration and reconstruction may be recovered by one or more special assessments levied by the Board equally against all Owners.

11.03. Damage by Builders or Owners. Builders or Owners are responsible for any damage to streets, curbs or sidewalks caused by them, their employees, subcontractors or their agents during construction and shall pay to Declarant or to the Association if after the events set out in Section 8:03 have occurred, the cost of repair and Declarant or Association shall use the payment to complete the repairs.

## ARTICLE 12

### EMINENT DOMAIN

12.01. Eminent Domain. If all or any portion of the Common Area is taken by action in eminent domain (hereinafter called a "taking"), the Association shall give written notice of the proceedings to all Owners and Mortgagees, and the condemnation award shall be fairly and equitably apportioned among the Owners, Mortgagees, and the Association as the court may determine. A condemnation award which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each affected Owner shall be allocated first to the repair, restoration and reconstruction of any remaining portion of the Common Area and then any excess shall be distributed equally among the affected Owners (or any Mortgagee of an Owner to the extent such Mortgagee is entitled to such Owner's share of the proceeds). If requested by the court, an Insurance Trustee shall be employed to make disbursement of the award.

12.02. Repair, Restoration, Reconstruction. If only a portion of a Common Area facility is taken, the Board shall promptly contract for the repair, restoration or reconstruction of the Common Area facility to a complete architectural unit, to the extent such repair, restoration and reconstruction is reasonably necessary and practical. If the cost of repair, restoration and reconstruction of the Common Area exceeds the amount awarded by the court for such purposes, the difference may be recovered by a special assessment levied equally against all owners.

## ARTICLE 13

### ARCHITECTURAL CONTROL

13.01. Architectural Control. NO BUILDING, POOL, FENCE, WALL, SOLAR PANEL, ANTENNA, DECK, PATIO OR OTHER STRUCTURE OR IMPROVEMENT ON ANY LOT SHALL BE ERRECTED, CONSTRUCTED, DEMOLISHED, OR ALTERED UNTIL AN APPLICATION, INCLUDING PLANS AND SPECIFICATIONS SHOWING THE NATURE, KIND, SHAPE, HEIGHT, MATERIAL, COLOR, AND LOCATION OF THE SAME, SHALL HAVE BEEN SUBMITTED TO AND APPROVED IN WRITING BY THE BOARD OR AN ARCHITECTURAL CONTROL COMMITTEE which has been empowered by the Board to approve such applications and comprised of not less than three (3) and not more than five (5) persons who have been appointed by the Board, provided, however, that no such approval shall be required for alterations to the interior of any residential structure. The Board may require a reasonable fee to accompany each application for approval. If the Board or such architectural control committee, having not theretofore approved or disapproved an application, fails to approve or disapprove an application within ten (10) days following receipt of written notice of failure to act, which written notice is given at least thirty (30) days combined shall have no application to the development, improvement, maintenance and repair of the Property by Declarant, Builder or by the Association, and neither the Board nor the architectural control committee shall have any power or authority to review or require modifications in plans and specifications for construction or installation of improvements by Declarant or Builder.

13.02. Reconstruction of Residences. In the event of damage or destruction to a residence by fire or other casualty, the Owner shall within four (4) months diligently commence to reconstruct such residence as soon as reasonably possible and substantially in accordance with the original plans and specifications thereof, provided, however, that such residence shall be restored so that the exterior appearances thereof substantially resemble their appearances in form and in color prior to such damage or destruction. Notwithstanding the foregoing, however, any Owner of a damaged residence may request permission from the Board or duly authorized architectural control committee to reconstruct or repair his residence in accordance with revisions in the plans and specifications. The Board or said committee shall grant such requests only in the event that the proposed change or deviation will materially benefit and enhance the entire Project in a manner generally consistent with the plan and development thereof.

13.03. Reconstruction by Association. In the event Owner fails to commence reconstruction within said time, then Association may so reconstruct damaged improvements at the expense of the Owner. Insurance benefits shall be credited against the liability of Owner to the Association.

13.04. Application for Approval. The Architectural Review Committee shall provide forms for submission of plans and forms for specifications for proposed improvements. The time allowed for consideration by the Architectural Review Committee shall commence only when a completed application form, complete plans and specifications, and any review fee established by the Board is delivered to the Secretary of the Board.

# ARTICLE 14

## MORTGAGE PROTECTION

14.01. Interpretation. In the event any provision of this Article 14 is inconsistent with or contrary to any other provision of this Declaration, the provisions of this Article 14 shall control.

14.02. Notices. Any Mortgagee of any Lot, by written notice to the Association setting forth the Lot encumbered, the Owner thereof and the address to which notices may be sent, may request and thereby be entitled to receive written notice from the Association of any default which is outstanding for sixty (60) days or longer by the owner of such Lot in the performance of his obligations under or in compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations, (ii) any substantial damage to or destruction of the Common Area, including the improvements located thereon, or, if known to the Association, any substantial damage to or destruction of a Lot, including the improvements located thereon, and (iii) any proposed or threatened taking by power of eminent domain of the Common Area or any portion thereof or of any Lot or portion thereof.

14.03. Mortgagee's Right to Information. Upon written request to the Association, a Mortgagee is entitled to: (1) inspect the books and records of the Association during normal business hours; and (2) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Project; and (3) receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.

14.04. Damage and Destruction Rights. In the event of substantial damage to or destruction of any Lot or improvements to a Lot or any part of the Common Area, no provision of any document relating to the property shall entitle the Owner of a Lot or other party to priority over such Mortgagee or the Association with respect to the distribution to such Owner of any insurance proceeds.

14.05. Condemnation Rights. If any Lot or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation proceedings or is otherwise sought to be acquired by a condemning authority, no provision of any document establishing the Project shall entitle the Owner of a Lot or other party to priority over such Mortgagee with respect to the distribution to such Owner of the proceeds of any award or settlement.

14.06. Right of First Refusal. Any right given by an Owner of a Lot to any third person to purchase such Lot before it is offered for sale or sold to any other person (such right commonly known as a "right of first refusal") shall not be binding upon or enforceable against any Mortgagee acquiring such Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, or by acceptance of a deed or assignment in lieu of foreclosure.

14.07. Subordination. No provisions contained in this Declaration shall defeat or render invalid the lien of any Mortgage which is made in good faith and for value. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage recorded prior to the date any such assessment becomes due. This subordination shall apply only to assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. Any Mortgagee who acquires title to or comes into possession of a Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against the Lot which have accrued prior to the time such Mortgagee or purchaser acquires title to or comes into possession of the Lot; provided, however, this exception shall not be applicable to any claim for assessments or charges levied by the Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due assessments upon such Lot; and provided further, that except as otherwise provided in this section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Lot shall not relieve a selling owner from personal liability for any assessments which became due and payable prior to such sale, transfer or conveyance, nor relieve such Lot from a duly recorded lien for any such prior unpaid assessment.

14.08. Payments by Mortgagees. Any Mortgagee, after at least ten (10) days prior written notification to the Association of the items to be paid and the failure of the Association within such time to make payment, may pay, alone or in conjunction with other Mortgagees, delinquent taxes, liens or assessments which may be or become a charge against the Common Area, or any portion thereof, and any overdue premiums on policies of fire and extended coverage insurance for the Common Area and in the event of a lapse of such a policy of insurance, may pay premiums to secure a new policy. In the event such payments are made, the Mortgagee making such payment shall be entitled to immediate reimbursement from the Association to the extent of the payment made.

14.09. Professional Management. In the event that Declarant or the Association enters into any contract with any person or entity to provide management or maintenance services to the Project, such contract shall not exceed one (1) year and shall provide that the Association shall have the right to terminate the contract for cause or without cause upon thirty (30) days written notice, without payment of a termination fee.

#### ARTICLE 15

#### MISCELLANEOUS PROVISIONS

15.01. Power to Settle Claims. The Board shall have the power and authority to compromise, settle, release and otherwise adjust claims, demands, causes of action and liabilities in favor of the Association and the Owners, on behalf of the Association and Owners, as the case may be, provided any such claim, demand, cause of action or liability arises out of or relates to a condition or defect common to all or a majority of the Lots or improvements constructed thereon, or to the development, design, construction, condition, repair or maintenance of or damage or injury to or defect in the Common Area or part thereof, and the Association shall have the right and the power to make and receive all payments or other consideration necessary herefor or in connection therewith. For such purposes, the Board shall be, and hereby is, irrevocably appointed attorney in fact to act on behalf of all Owners upon such terms and conditions and for such consideration as may be approved by a majority of the Board.

15.02. Independence of Provisions. The provisions of this Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

15.03. Notices. Notices shall be in writing and shall be addressed as follows: (i) if to an Owner, to the address of his Lot; (ii) if to Declarant, to Bent Creek Developers, LLC c/o Dean Harrell, 2400 Beulah Church Road Matthews, NC 28104; and (iii) if to the Association, to the address of the Property. The Association may designate a different address for notices by giving written notice of such change of address to all owners and to Declarant. Declarant may designate a different address for notices by, giving written notice of such change of address to the Association. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association and to Declarant.

15.04. Headings. The headings used in this Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

15.05. Enforcement. The failure of any Owner to comply with the provisions of this Declaration, the Bylaws or the Articles shall entitle the Association, any owner, or any of them, to maintain an action for the recovery of damages or injunctive relief or both, and such persons or entities, or any of them, shall have the right to enforce all limitations, restrictions, covenants, conditions, easements, liens, charges, assessments and equitable servitudes imposed by or pursuant to the provisions of this Declaration. Failure to enforce the provisions of this Declaration shall not be deemed a waiver of the right to do so hereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under law.

15.06. Equal Opportunity Housing. This Project provides equal opportunity housing. Each Lot sold shall be sold without regard to the race creed, color, national origin, ancestry, religion, marital status, age or sex of the purchaser.

15.07. Exhibits. Exhibit A which is attached to this Declaration, incorporated herein and made a part hereof by this reference.

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15.08. Amendments. During any period in which a two-class voting structure is in effect, Declarant may amend this Declaration without the approval of any Member or Mortgagee provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Area as set forth in this Declaration and the amendment does not adversely affect the title to any Lot; however, such amendment must be approved in writing by the Department of Housing and Urban Development and the Veterans Administration if such approval is required. In the event that such amendment would materially and adversely affect the security, title and interest of any Mortgagee, such amendment shall be valid only upon the written consent of sixty-seven percent (67%) of the Mortgagees (based on one vote for each mortgage owned) and the prior written consent of the Department of Housing and Urban Development and the Veterans Administration if such approval is required. Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Declaration or make such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Declaration to be recorded to reflect such changes.

Any other amendments of this Declaration shall require (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members of the Association as such classes are set forth in the Bylaws and this Declaration; or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association; provided, however, that the percentage of the Voting Power (of each class of Members of the Association, and of Members other than Declarant) necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

Notwithstanding anything to the contrary contained in this Declaration, any amendment which establishes, governs, provides for or regulates any one of the following: (i) voting; (ii) assessments, assessment liens or subordination of such liens; (iii) reserves for maintenance, repair and replacement of the Common Area; (iv) insurance or fidelity bonds; (v) right to use of the Common Area; (vi) responsibility for maintenance and repair of the Project; (vii) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (viii) the boundaries of any Lot; (ix) interests in the Common Area; (x) leasing of ownership interests; (xi) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot; (xii) any provisions which are for the express benefit of Mortgagees; or (xiii) any other material amendment shall require (i) if a two class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Association, and the written consent of sixty-seven percent (67%) of the Mortgagees. Any Mortgagee who does not respond within thirty (30) days request by the Association for consent to an amendment of this Declaration shall be deemed to have approved such request.

Notwithstanding anything contrary contained in this Declaration, no amendment shall violate the terms of the Permit or the zoning laws of the Town.

Any instrument amending this Declaration must contain a certification by the Secretary of the Association that the amendment has been correctly adopted in accordance with the provisions of this Declaration and be recorded in the official records of the County. Any such amendment shall be effective upon the date of recordation.

IN WITNESS WHEREOF, Declarant has executed and sealed this Declaration as its act and deed this 2<sup>nd</sup> day of December, 2003.

CURRY PLACE, INC.

By:   
President

RICK DUNCAN CONSTRUCTION INC.

By:   
President

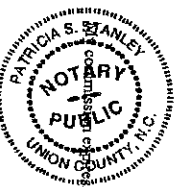
STATE OF NORTH CAROLINA

COUNTY OF UNION

Patricia S. Stanley, a Notary Public, certify that  
Jones Richard Duncan personally came before me this day and acknowledged that  
he/she is the President of CURRY PLACE, INC., and that he/she, as  
Resident being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal this 2ND day of December, 2003.

Patricia S. Stanley  
Notary Public



STATE OF NORTH CAROLINA

COUNTY OF UNION

The foregoing certificate of Patricia S. Stanley, Notary (es)  
Public of Union County, North Carolina, is/are hereby certified to be correct. This instrument  
was presented for registration and recorded in this office in Book 3294, page 80.

This 5th day of December, 2003, at 1200 o'clock P.m.

JUDY G. PRICE  
Register of Deeds

By: Elizabeth Cook  
2003

343209080

12-5-2003  
12:48:00  
FILED IN  
FOR THE CLERK  
Union County Register, North Carolina

58774

G.S.C. H+H  
After Recording Return To: R. Kenneth Helms, Jr. (ss)  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
CURRY PLACE

THIS DECLARATION is made as of the 2<sup>nd</sup> day of December, 2003 by CURRY PLACE, INC., a North Carolina corporation, ("Declarant") and Rick Duncan Construction, Inc. with reference to the following facts:

#### RECTALS

A. Declarant is the owner of certain real property in Union County, North Carolina as shown in Plat Cabined H, File 712 & 713 in the Union County Registry, reference to which is hereby made and incorporated herein by this reference (the "Property"). Declarant intends to develop the Property into a single-family detached and attached residential community to be known as CURRY PLACE. Declarant owns additional property and reserves the right to subject said additional property to the provisions set out herein.

B. Declarant intends to develop the Property under a common scheme and general plan for the improvement and maintenance thereof.

C. For this purpose, Declarant intends to subject the Property to the limitations covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth in this Declaration, for the benefit of the Property and the future owners thereof.

D. Declarant deems it desirable for the management and administration of the planned development to incorporate Curry Place Homeowner's Association, Inc. as a non-profit corporation under the laws of the State of North Carolina for the purposes of administering and enforcing the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such other powers as may be authorized by this Declaration, by law, or by its Articles of Incorporation and Bylaws.

E. Rick Duncan Construction, Inc. has been conveyed certain Lots and executes this document for the purpose of consenting to the covenants, conditions and restrictions set out herein.

NOW, THEREFORE, Declarant hereby declares as follows:

#### ARTICLE 1

##### DEFINITIONS

The following terms shall have the following meanings when used in this Declaration:

1.01. Articles, "Articles" means the Articles of Incorporation of the Association, including any amendments thereto.

1.02. Association, "Association" means Curry Place Homeowner's Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

1.03. Board, "Board" means the Board of Directors of the Association.



1.04. **Builder.** "Builder" means any person or firm in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale on the Property.

1.05. **Bylaws.** "Bylaws" means the Bylaws of the Association, including any amendments thereto.

1.06. **Common Area.** "Common Area" means all real property owned by the Association for the common use and enjoyment of its Members, but does not include real property over which the Association has only an easement.

1.07. **Completion of Sales.** "Completion of Sales" means the earlier of (1) conveyance of all portions of the Property to purchasers other than a successor Declarant hereunder or (2) twenty (20) years from the closing of the first sale of a Lot to a purchaser other than a Builder or a successor Declarant hereunder; provided, however, if Declarant is delayed in developing the Property, constructing improvements or selling Lots and dwellings due to strikes or work stoppages; shortages of materials, supplies, fuel, power, or energy; moratoria or suspensions on issuance of land use permits and approvals or affecting the availability of water, sewer, power or other utilities or necessary services; inclement weather; civil strife; major disaster or other cause beyond Declarant's reasonable control, said twenty (20) year period shall be extended by the period of any such delay.

1.08. **County.** "County" means Union County in the State of North Carolina.

1.09. **Declarant.** "Declarant" means Curry Place, Inc. a North Carolina corporation, and any successor or assign to whom Declarant assigns its rights and interests as Declarant hereunder in whole or in part by instrument recorded in the official records of the County.

1.10. **Declaration.** "Declaration" means this Declaration and all amendments or supplements hereto.

1.11. **Lot.** "Lot" means any numbered single family lot or plot of land, together with any improvements thereon, as shown upon any recorded final subdivision map covering the Property or a part thereof, which is not a dedicated street or Common Area.

1.12. **Member.** "Member" means a member of the Association.

1.13. **Mortgage.** "Mortgage" means a mortgage or deed of trust which constitutes a lien upon a Lot given to a bank, savings and loan association or other lender for the purpose of securing indebtedness incurred to purchase or improve a Lot. A mortgage or deed of trust on a lot given for any other purpose shall not entitle the mortgage to the same privileges as a mortgage described in Section 1.14 below.

1.14. **Mortgagee.** "Mortgagee" means the holder of the beneficial interest in any Mortgage or Deed of Trust described in Section 1.13 above.

1.15. **Notice and Opportunity for Hearing.** "Notice and Opportunity for Hearing" means giving at least fifteen (15) days prior notice of a proposed action and the reasons therefor, and of an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

1.16. **Owner.** "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, and shall include Declarant and Builder as to any Lot owned by Declarant or Builder unless otherwise qualified herein. "Owner" shall not include any person or entity who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

1.17. **Person.** "Person" means an individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.18. **Property.** "Property" means the real property described on Exhibit A hereto.

1.19. **Rules and Regulations.** "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been given to owners in accordance with the requirements of this Declaration.

1.20. **Substantial Completion.** "Substantial Completion" means that the improvement in question has been constructed to such an extent that it can be used for its intended purpose.

1.21. **Town.** "Town" means the Town of Stallings in Union County, North Carolina.

1.22. **Voting Power.** "Voting Power" means the total number of votes held by all Members (and if there is more than one class of Members, the total of each class of Members) whose membership at the time the determination of voting power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting. All voting specifications and requirements shall apply to the entire Property.

1.23. **Permit.** "Permit" shall mean and refer to that Special Use Permit (Conditional Use) approved by the Town Council on the 12<sup>th</sup> day of November, 2002.

## ARTICLE 2

### SUBMISSION AND TERM

2.01. **Submission.** The Property shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein, all of which are declared to be (i) in furtherance of a common scheme and general plan for the development, improvement and maintenance of the Property and (ii) for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Property. All of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein shall run with, be binding upon and inure to the benefit of the Property, shall be binding on and inure to the benefit of each and every person having or acquiring any right, title or interest in the Property, shall be binding upon and inure to the benefit of the successors in interest of such persons, and shall inure to the benefit of the Association, its successors and assigns.

2.02. **Incorporation of Declaration into Instruments.** Any deed or other instrument by which a Lot is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, whether or not the deed makes reference hereto.

2.03. **Term.** This Declaration shall remain in force for a term of twenty (20) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years, unless sooner terminated by the affirmative vote of seventy-five percent (75%) of the total Voting Power of the Association and the written consent of seventy-five percent (75%) of the Mortgagees.

2.04. **Additional Subdivision Sections.** The Developer or its successor may add additional sections constituting portions of the Property by the execution and recording of Supplemental Declarations referring to this document and describing the additional section or sections. Upon recording, the additional section or sections shall become subject to these Declarations, as if the same had been originally included, in all respects.

## ARTICLE 3

### COMPLIANCE WITH MANAGEMENT DOCUMENTS

3.01. **Compliance with Declaration and Other Documents.** Each Owner, resident or tenant of a Lot shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations duly adopted by the Association, decisions and resolutions of the Association and its duly authorized representative, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages, unpaid assessments, or for injunctive relief, including reasonable attorney fees.

3.02. **Resolution of Conflicts Between Documents.** Each Owner covenants and agrees that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and Rules and Regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles and this Declaration, then, the provisions of this Declaration shall prevail. In the event that anything shown on a recorded final subdivision map for all or any portion of the Property is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail. If a dispute arises among Owners in regard to the administration of the Property, then the provisions of this Declaration shall prevail.

3.03. **Town of Stallings Zoning Code.** The provisions of the zoning code for the Town of Stallings and any amendments thereto and the conditions and requirements set forth in the Permit shall at all times be paramount to the provisions of this Declaration and in the event of a conflict, the said zoning code shall be controlling over the Declaration.

#### ARTICLE 4

##### PROPERTY RIGHTS

4.01. Common Area Easements. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area and of access to and from his Lot over any streets comprising a portion of the Common Area (if any), which rights and easements shall be appurtenant to and shall pass with the title to his Lot and subject to the following rights and restrictions:

(A) The right of the Association, after Notice and Opportunity for Hearing, to limit the number of guests of an owner, to charge reasonable admission and other fees for the use of the Common Area facilities, if any, and to limit the use of said facilities to Owners who occupy a residence on the Property.

(B) The right of the Association to suspend the right of an Owner to use the Common Area facilities (1) for any period during which a fine against a Member or any assessment against such Owner's Lot remains unpaid; and, (2) after Notice and Opportunity for Hearing, for a period not to exceed ninety (90) days for any infraction of the Rules and Regulations.

(C) The right of the Association to grant easements and to dedicate or otherwise convey all or any part of the Common Area as provided in this Declaration.

(D) The right of the Association to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes, subject to the approval of Members and Mortgagees as otherwise provided in this Declaration.

(E) The right of the Association to adopt Rules and Regulations governing use and enjoyment of the Common Area; and

(F) Easements for ingress, egress, use and enjoyment over, in, to and throughout the Common Area for the benefit of Declarant or any successor Declarant.

4.02. Delegation. Any Owner may delegate his rights of use and enjoyment of the Common Area and any facilities thereon to the members of his family or household residing on his Lot and to his guests and invitees while he is in possession of his Lot, subject, however, to reasonable restrictions imposed by the provisions of this Declaration, the Bylaws and the Rules and Regulations. Guests and invitees shall not be permitted on the Common Area unless the Owner or household member delegating his rights of use and enjoyment is physically present to accompany such guests and invitees while they are on the Common Area. Provided the notice required by Section 4.03 of this Declaration has first been given to the Association, a tenant of an Owner, while residing on such Owner's Lot, shall be entitled to use and enjoy the Common Area and any facilities thereon and to delegate rights of use and enjoyment in the same manner as if such tenant were the Owner of such Lot. No such delegation shall release an Owner from his obligations hereunder, including, without limitation, the obligation to pay regular and special assessments. Upon request, each Owner or tenant shall notify the Secretary of the Association of the names of all persons to whom such Owner or tenant has delegated any rights of use and enjoyment of the Common Area and the relationship that each such person bears to such Owner or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as the rights of Owners.

##### 4.03. Tenants.

(A) Any Owner who rents or leases his Lot to a tenant shall not be entitled to use and enjoy any recreational or other common facilities on the Common Area during the period the Lot is occupied by such tenant.

(B) No Owner shall lease or rent less than an entire Lot and no more than one family (not related by blood or marriage) shall live in any one Lot. Except as provided in Section 7.20, the Lots shall not be leased or rented for hotel or transient purposes and no rental agreement or lease shall be made for a period of less than sixty (60) days. Subject to the foregoing restrictions, Owners shall have the right to lease or rent their Lots, provided that any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of this Declaration, the Bylaws, and the Rules and Regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of this Declaration, the Bylaws, and the Rules and Regulations.

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(C) In the event an Owner shall rent or lease his Lot such Owner shall immediately give to the Association in writing:

- (1) the name of the tenant and the Lot rented or leased;
- (2) the current address of such Owner;
- (3) a true and complete copy of the lease or rental agreement; and
- (4) the certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, the Bylaws and the Rules and Regulations and that such tenant has been advised of any obligations he may have thereunder as a tenant.

(D) In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.

4.04. **Reciprocal Easements.** There shall be reciprocal appurtenant easements between each Lot and such portion or portions of the Common Area as may be adjacent thereto and between adjacent Lots for the flow of rainwater from gutters and downspouts; provided, however, that no such easement shall unreasonably interfere with the use and enjoyment of the Common Area or any adjacent Lot. If any Common Area or Lot encroaches upon a Lot because of the placement, construction, reconstruction, repair, movement, setting or shifting of the improvements constructed, reconstructed or repaired in accordance with the provisions of this Declaration, including a driveway, an easement for the encroachment and for its maintenance shall exist to a distance of not more than one (1) foot as measured from any point on the common boundary between the Common Area and the Lot or between Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, that in no event shall such an easement exist for willful encroachments. If any Lot encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Property, an easement for the encroachment and for its maintenance shall exist so long as it remains.

4.05. **Utility Easements.** A perpetual easement is reserved over each lot as shown on all recorded subdivision maps of the Project for installation, maintenance, use or repair of public (or quasi-public) utilities, cable television or public (or quasi-public) storm drainage. All easements for installation, maintenance, use or repair of public (or quasi-public) utilities, cable television or public (or quasi-public) storm drainage facilities which are dedicated on any final subdivision map of the Property shall be kept free of buildings, and within such easements no structure shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, use or repair of such public (or quasi-public) utilities, cable television or drainage facilities, or which may damage, interfere, or change the direction or flow of drainage in the easements. Any portion of a Lot which shares a berm with the Common Area shall be subject to an easement in favor of the Association for landscaping, moving and maintenance of the berm. All such easements at all times shall be accessible to Declarant until the Property is completed and at all times shall be accessible to all persons installing, repairing, using or maintaining such utilities, cable television and drainage facilities. The easement area for each Lot and all improvements in it shall be maintained continuously by the Owner of such Lot, except for those improvements for which a public (or quasi-public) authority or utility company is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over unsold Lots for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

4.06. **No Subdivision of Lots; No Time Sharing.** There shall be no further subdivision or partition of any Lot nor shall any Owner or any other person acquiring any interest in a Lot seek any partition or subdivision thereof. There shall be no timesharing or other co-ownership which allows multiple Owners sequential possessory interests in a Lot.

4.07. **Sale of Common Area.** Except as otherwise provided in this Declaration and the permit, no sale, transfer, dedication, hypothecation, partition, subdivision, abandonment, release or alienation of the Common Area shall occur or be valid, whether by act or omission of the Association, without the vote or written consent of sixty-seven percent (67%) of the total Voting Power of all Members.

4.08. **Rules and Regulations.** The Board shall have the right to write, amend, supplement, adopt, publish and enforce Rules and Regulations governing the Property, the use and enjoyment of the Common Area and any facilities thereon, and the personal conduct thereon of the Owners, their guests, invitees, members of their families or households and tenants. The Members may amend any such Rules and Regulations adopted by the

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Board at any regular or special meeting of Members called for such purpose by (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of each class of Members of the Association, or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Association. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant or Builder (or have an adverse impact on Declarant or Builder or upon the sale of Lots or the construction of improvements thereon), and must be consistent with this Declaration, the Articles and the Bylaws.

4.09. **Enforcement.** The Association shall have the right, after Notice and Opportunity for Hearing, to levy fines for infraction of the provisions of this Declaration or the Rules and Regulations, provided (i) the Member shall have been warned in writing of a previous infraction within the preceding one (1) year; and (ii) the fine conforms to the provisions of Section 9.11.

#### ARTICLE 5

#### COMMON AREA EASEMENTS AND RIGHTS OF WAY; ENCUMBRANCES

5.01. **Dedications.** The Association shall have the power to grant easements in, on, over, through, and across the Common Area for any public or quasi-public improvements or facilities and their appurtenances, including, without limitation, street, sewer, drainage, water, gas and sprinkler improvements and facilities, provided (i) any such easement does not unreasonably interfere with the use and enjoyment of the Common Area or any Lot and (ii) the prior written consent of Declarant shall be obtained so long as Declarant owns any Lot. If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to said Lot Owner's easement. Each Owner, by accepting a deed to a Lot, expressly grants to the Association an irrevocable power of attorney for the purpose of granting easements in, on, over, through and across the Common Area. The President or other duly designated officer of the Association may execute, acknowledge and record in the official records of the County a certificate stating that the Board is the attorney in fact for the Owners for the purpose of such grant and that such power of attorney is properly exercisable in accordance with this Declaration. The acts of the Board in exercising its power of attorney shall be conclusively binding on all Owners. The power of attorney herein granted shall include authority to do such acts incidental to such grant and to incur such expenses as may be necessary or convenient in connection therewith. The Board, by resolution, shall instruct the appropriate officers of the Association to make, execute and deliver on behalf of any owner, as his interest may appear, any and all instruments, certificates and documents, including but not limited to, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be deemed necessary or convenient for such dedication or grant.

5.02. **Encumbrances.** The Association shall have the right to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes upon the vote or written consent of sixty-seven percent (67%) of the total Voting Power of all Members.

#### ARTICLE 6

#### COMMON AREA AND LOT MAINTENANCE

6.01. **Maintenance by Association of Common Areas.** The Association shall maintain and keep in good repair the Common Area and all improvements located thereon. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and grass areas, driveways, sidewalks and other improvements situated in the Common Area, if any. The Association shall maintain and keep in good repair all landscaping and grass areas within the boundaries of Lots. The Association shall maintain and keep in good repair all water and sewer lines serving more than one (1) Lot, even though located partially or wholly within the boundaries of a Lot.

The Association may contract with the local electrical power utility for the installation and thereafter continuous operation of decorative streetlights to be located within the public streets on the Property and such fees charged by the utility shall be paid from the annual assessments.

6.02. **Maintenance by Association of Improvements Upon Lots.** The Association shall maintain the grassed lawn and landscape plants required by the Association upon all lots within the subdivision, unless otherwise herein specified. The Association shall repair, replace and care for roof shingles (not excluding maintenance, repair or replacement of other portions of the roof) for each single-family detached and attached residential dwelling. The Association shall maintain the paint on all exterior columns for each single-family detached and attached residential dwelling. The Association shall also contract with a termite control company to provide termite inspections and treatment for each single-family detached and attached residential dwelling.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, lessees or their family members, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. The Association is hereby granted an easement and right of access to go upon any Lot for performance of repairs or maintenance for which the Association is responsible hereunder.

6.03. **Maintenance by Owners.** Except as provided in Section 6.01 and 6.02 of this Article 6, above, all maintenance of the improvements on the Lot shall be the responsibility of the Owner thereof. Except as provided in Section 6.01 and 6.02 of this Article 6, Each Owner shall maintain, repair and replace, at his expense, all exterior and interior portions of the improvements on his Lot which shall need repair, including gutters, downspouts, and the outermost surfaces of buildings, including the painting of entry doors and the repair of siding, repair and replacement of entry doors and garage doors and their apartment hardware, repair of wall sheathing, all exterior glass including windows and patio doors, bathroom and kitchen fixtures, light fixtures and other electrical or plumbing equipment, pipes and fittings serving an Owner's Lot. Each Owner is responsible for the maintenance, repair and replacement of all utility lines, pipes and cables serving such Owner's Lot, regardless of whether such utility line, pipe or cable is located on such Owner's Lot or upon Common Area adjacent to such Owner's Lot. Further, each Owner shall repair, maintain and replace, at his own expense, when necessary, the heating and air-conditioning systems serving his single-family detached or attached residential dwelling, whether located on his Lot or the Common Area adjacent to his Lot. Each Owner shall be responsible for pest control.

In the event that the Board of Directors of the Association determines that (a) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees or invitees, and is not covered or paid for by insurance, in whole or in part, then the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement, at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair or replacement; or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement at Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

6.04. **Party Walls.** Attached residential dwellings shall be built on Lots 62 through 77 of Curry Place, Phase I, as shown on the recorded plat.

(a) **General Rules of Law to Apply.** This section shall apply only to said lots and any additional attached residential dwelling lots in subsequent phases. Each wall which is built as a part of the original construction of the homes upon said lots and placed on the dividing line between said Lots comprising the attached residential dwellings, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance for a party wall shall be shared in equal shares by the Owners of the two (2) adjoining Lots utilizing such wall.

(c) **Maintenance and Use of Party Walls.** No party wall shall be altered or modified in any fashion, and the Owners of the two (2) adjoining Lots utilizing such party wall shall maintain such party wall as originally constructed. No Owner shall place a speaker or other sound amplification equipment within a party wall.

(d) **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and the Owner of the other Lot adjoining such wall shall contribute one half of the cost of restoration thereof without prejudice; however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omission.

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

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

(g) **Arbitration.** In the event of any dispute arising concerning a party wall or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

(h) **Easements and Right of Entry for Repair, Maintenance, and Reconstruction.** Every Owner shall have an easement and right of entry upon the Lot of any other Owner with whom such Owner shares a party wall to the extent reasonably necessary to perform repair, maintenance, or reconstruction of such party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the repairing Owner shall restore the adjoining Lot or Lots and Common Area to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

(i) **Certification by Adjoining Property Owner that No Contribution is Due.** If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Section, request of the adjoining Owner a certification that no right of contribution exists, whereupon it shall be the duty of such adjoining Owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

6.05. **Restoration of Casualty Loss.** Subject to the requirements of Article 10 and of Section 14.02 of this Declaration, an Owner shall be responsible for the replacement and reconstruction of improvements on his Lot required because of damage or destruction by fire or other casualty and each Owner shall maintain, repair and replace the surface and subsurface drainage facilities and appurtenances located on his Lot as may be necessary to maintain good and proper drainage of the property and other real property in the vicinity, except for such facilities the maintenance of which has been assumed by the County or other governmental entity. If any Owner, after Notice and Opportunity for Hearing, fails to maintain, repair and replace such improvements, drainage facilities and appurtenances as required herein, the Association, at the expense of such Owner, shall maintain, repair or replace such improvements, drainage facilities and appurtenances at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a special assessment against such Owner to obtain reimbursement therefor as provided in Section 9.07.

6.06. **Right to Enter.** After reasonable notice to the occupant, the Association or its agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible or for the enforcement of this Declaration, and each Owner shall accept title to his Lot subject to such right of access of the Association or its agents.

#### ARTICLE 7

#### USE RESTRICTIONS

In addition to the restrictions set forth in Article 13 below, the following apply to the Property:

7.01. **Residential Use.** Except as otherwise provided in this Declaration, each Lot shall be used solely for the construction and occupancy of a residence for a single family and for no other purpose. Except as provided in Section 7.20, no Owner shall use or cause or permit his Lot to be used for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose. No lot shall be used as a group home, half way house or any other similar use. No structure shall be erected, altered, placed or permitted to remain on any Lot exceeding two and one-half (2 1/2) stories in height, and a private garage for not more than two (2) cars and other outbuildings incidental to residential use of the Lot.

7.02. **Unlawful Activity.** No unlawful activity shall be conducted on any Lot or on any other part of the Property. Nothing shall be done on the Property that is an unreasonable annoyance, inconvenience or nuisance to the residents of the Property, or that unreasonably interferes with the quiet enjoyment of occupants of Lots. No doorways, walkways or streets shall be obstructed in any manner which would interfere with their use for ingress or egress in the event of fire, earthquake or other emergency.

7.03. **Parking.** Unless otherwise permitted by the Rules and Regulations no boat, trailer, recreational vehicle, camper, camper truck or commercial vehicle shall be parked, stored or left (a) on any undesignated part of the Common Area, (b) in any driveway or (c) on any other part of a Lot, (d) or otherwise on the Property unless the same are fully enclosed within the garage located on the Lot, or are kept behind the house on the Lot

which fully hides them from the view of the public walking by such Lot or otherwise properly screened in accordance with the Rules and Regulations. Any such vehicle shall be parked, stored or left wholly within, the garage located upon the Lot, except to the extent same is already occupied to capacity, in which case such vehicle may be parked temporarily in the driveway once during any calendar month for not more than 24 consecutive hours. This restriction shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant and its agents and contractors in the conduct of their business prior to Completion of Sales. No boat, truck, trailer, pre-manufactured home, camper, recreational vehicle or tent shall be used as a living or dwelling area on the Property. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway on the Property, except in the case of emergency and except as may be permitted by the Rules and Regulations. No unlicensed, wrecked or inoperable vehicles may be left on a Lot outside an enclosed structure. Each lot shall have a minimum concrete parking pad width of sixteen (16) feet by twenty-five (25) feet so as to accommodate two automobiles parked side by side. No vehicles shall be parked on the streets located on the property.

**7.04. Signs and Curtains.** No Owner shall place on or about any window any metallic foil or other coating, substance or material which acts as a reflector of light and no owner shall display, hang, store or use any signs, curtains, draperies, shades, stained glass or other articles whatsoever outside of the dwelling on any Lot so as to be visible from outside the Lot, excluding seasonal decorations and as may be permitted by the Rules and Regulations. Notwithstanding the foregoing, one professionally manufactured sign of not more than five (5) square feet advertising a Lot for sale or rent may be placed by the Owner on his Lot in such manner that it will be visible from outside the Lot. The prohibitions in this section shall not apply to Declarant or its agents, who may erect such signs as Declarant deems desirable to promote the sale of Lots.

**7.05. Antennas and Dishes.** No radio or television transmission or reception towers, antennas, dishes or disks shall be erected on any Lot, except that one dish or disk not exceeding two (2) feet in diameter shall be permitted subject to the following limitations: (a) dishes or disks may not be located in the area between the street right-of-way and the front corner of the house or, if a corner lot, in the area between the side street right-of-way line and the minimum building setback lines shown on the recorded plat, (b) dishes or disks must be screened from view from all public street rights-of-way, and (c) in all events the location of any dishes or disks and the proposed method of mounting and screening the same must be approved by the Board or architectural control committee, its successors or assigns prior to installation.

**7.06. Laundry.** No laundry or wash shall be dried or hung upon the exterior of any Lot or any place visible on the Property from outside such Lot.

**7.07. Fences.** No fence or wall shall be erected on any Lot closer to the street than the side street setback or the front of the building facade except for temporary decorative fencing installed by the builder on a model home. No fence or wall shall be erected on any berm of dirt which was placed along the side or rear lot line of any Lot by the Declarant. Privacy fencing around patios, decks or pools, not to exceed six (6) feet in height may be erected only with the prior approval of the Board or the architectural control committee. Perimeter fencing shall be picket fencing, shadow fencing (either vertical or horizontal), decorative metal or split-rail only, four (4) feet in height, and any other fencing, including chain link or other type of metal fencing, is expressly prohibited, except that metal fencing attached to the split-rail fencing may be used to contain animals within the yard with the prior approval of the Board or the architectural control committee. The spacing between the pickets of perimeter fencing shall be not less than 1 1/2 inches and all such pickets shall be installed on the exterior side of the fence. Decorative metal fencing must be approved by the Board or architectural control committee prior to installation.

#### **7.08. Pets.**

(A) No animals shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs, cats, et cetera, shall not exceed three (3) in number except for newborn offspring of such household pets which are under nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Property.

(B) The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that all animals be kept on a leash when in the Common Area and that animals be restricted to designated areas within the Common Area and that Owners are



responsible for cleaning up any mess that a pet creates within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing on the Property at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in Section 7.08(A).

7.09. **Trash and Vegetation.** No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers located in an appropriate area screened and concealed from view. No weeds, vegetation, rubbish, debris, garbage, waste materials or materials of any kind whatsoever shall be placed or permitted to accumulate on any Lot or any portion of the Property which would render it unsanitary, unsightly, offensive, or detrimental to any property in the vicinity thereof or to the Occupants of any property in such vicinity. Except as provided in Section 6.02, Grass, hedges, shrubs, vines and mass planting of any type on any Lot or any portion of the Property shall be kept trimmed by owner and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. Trees, shrubs, vines and plants which die shall be promptly removed. All trees or plantings shall be behind the sidewalk. If any Owner, after Notice and Opportunity for Hearing, fails to maintain such Owner's Lot in the manner provided by this Section 7.09 the Association, at the expense of such Owner, may take such steps as are necessary in order to remedy such condition including cutting and removing of weeds, vegetation, rubbish, debris, garbage, waste materials and other accumulations on any Lot at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a special assessment against such Owner to obtain reimbursement of the cost thereof as provided in Section 9.07.

7.10. **Trees.** The front yard of each lot shall contain at least one tree, each with a minimum caliper of one and one half inches measured at a height of six inches above ground. These trees will be planted at equal distance through out the neighborhood measured from the back of the curb. Builders and owners shall be responsible for damage to these trees and replacement, if necessary, as to be determined by the Association.

7.11. **Nuisance.** No noxious or offensive activity shall be carried on in or upon any Lot or the Common Area nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Property or unreasonably interferes with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his Lot which would result in the cancellation of insurance on any other residence or any part of the Common Area or which would be in violation of any law.

7.12. **Building Setbacks.** No building shall be erected on any Lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Lot, no residence or other building shall be located nearer than the distance shown on the recorded map to the side street line. With respect to corner Lots, the front lot line shall be deemed the street line having the significantly shorter frontage, and any residence erected on such corner Lot shall face the front lot line. Provided, however, that this provision shall not be construed to authorize or permit encroachment of any structure on a Lot upon any easement shown on the recorded plat or reserved herein or upon any other Lot. This provision shall also not be construed to authorize any violation of the zoning provisions of the appropriate governmental authority.

7.13. **Temporary Structures.** Except as provided in Section 7.20, no residence of a temporary nature shall be erected or allowed to remain on any Lot, and no boat, truck, trailer, shack, tent, barn, detached garage, recreational vehicle or any other building or vehicle of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

7.14. **Floor Space.** The minimum heated floor area per each residence constructed upon a Lot shall be 1300 square feet.

7.15. **Unintentional Violations.** In the event of the unintentional violation of any of the building line restrictions set forth herein, Declarant reserves the right, by and with the mutual written consent of the Owner of such Lot, to change the building line restriction set forth in the instrument, provided however, that such changes shall not be in violation of any provisions of the Zoning provisions of the appropriate governmental authority.

7.16. **Above Ground Pools.** No above ground pools shall be erected or installed on a Lot.

7.17. **Architectural Requirements.** The driveway and sidewalks on a Lot shall be constructed of concrete. The mailbox and paper holder on a Lot shall be uniform as specified by the Declarant. Lots shall be planted with standard size plantings along the front of the dwelling to screen the foundation. No above ground storage tanks shall be erected or installed on a Lot. No building shall be erected, placed, or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Declarant, its successors or assigns, as to quality of workmanship and materials, harmony of

external design with existing structures, and as to location with respect to topography and finish grade elevation. No dwelling erected on any Lot shall have exterior foundation or walls of cinder blocks, cement blocks, asbestos siding or artificial brick siding. All exterior walls shall be constructed of brick, stone, stucco, vinyl, hardwood or wood siding. No garage, carport, room, building, utility shed or similar structure customarily incident to the residential use of the Lots, whether attached or detached from the main dwelling, shall be erected, placed, altered or permitted to remain on any Lot unless the design, plans and location of the same shall have been approved in writing by the Declarant, its successors or assigns. If the Declarant fails to approve or disapprove such design, plans and location within thirty (30) days after receipt of written plans and specifications, then further approval will not be required but will be deemed to have been waived. Declarant shall be entitled to stop any construction in violation of these restrictions so long as Declarant owns any Lot or Lots within the Property. It is the intent that only site built dwellings shall be constructed. No single wide mobile homes, double wide mobile homes, or mobile homes of any kind or description, trailers, modular homes or manufactured homes of any description shall be constructed or placed on a lot.

7.18. Exercise Equipment. All swing sets, basketball goals and similar equipment must be located within the building setback lines and comply with the Rules and Regulations.

#### 7.19. Removal of Obstructions.

(A) The Declarant, its successors or assigns, without notice, may remove any obstructions of any nature located within road rights-of-way (including, but not limited to, trees, shrubs, fences, basketball goals and mailboxes) which, in the opinion of the Declarant, its successors or assigns, either might produce a hazard or might interfere with the ability or willingness of the State of North Carolina (or agency or department thereof) to take over the responsibility for maintenance of the roads.

(B) The Declarant, its successors or assigns, shall have the right, in its sole discretion, to charge back the actual cost to it of removing obstructions against the Lot Owner who directly or through his agents, contractors or invitees caused or permitted the obstruction to be placed in the road right-of-way, and such Lot Owner shall indemnify and save the Declarant, its successors or assigns, harmless from all liability, claims, damages and expense imposed upon the Declarant, its successors or assigns, at law or in equity, caused by or resulting from the placement of the obstruction in the road right-of-way. In the event that the Lot Owner responsible for such charge or liability as aforesaid fails and refuses, after demand by the Declarant, its successors or assigns, to pay said charge or liability, then the Declarant, its successors or assigns, shall have a lien against his Lot thereon and may enforce collection of the charge or liability, together with reasonable attorneys' fees, by any and all remedies afforded by law or in equity including, without limitation, the filing of a notice of lien and perfecting the same as by law provided, to the end that such charge or liability shall become a charge against the said Lot or dwelling unit.

7.20. Declarant's Rights. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, Declarant, its agents, employees and contractors shall not be restricted or prevented by this Declaration from doing, and Declarant, its agents, employees and contractors shall have the right to do such things or take such actions as they deem necessary, advisable or convenient for completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots. In the event of any conflict between a Builder and Declarant, the Declarant will be the prevailing party. The rights of Declarant or Builder, their agents, employees and contractors shall include, without limitation:

(A) The right and easement of ingress in, over and upon the Common Area for the purpose of performing on any part or parts of the Property acts deemed necessary, advisable or convenient for the completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots;

(B) The right to erect, construct, maintain, demolish or remove structures and other improvements on any Common Area as they deem necessary, advisable or convenient for the completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots; and

(C) The right to use Lots and improvements owned by Declarant or Builder as models, sales offices and contractor's offices and to construct and display promotional, informational and directional signs and other sales aids on or about any portion of the Project.

The rights of Declarant and, to the limited extent set forth herein, Builder under this section shall terminate not later than one (1) year after the Completion of Sales. Amendment of this section shall require an affirmative vote of 75% of the Class A Members and the consent of the Declarant, provided after Completion of Sales, consent of the Declarant is not required but is subject to the Permit or the zoning laws of the Town.

7.21. Right to Enter. Any governmental agency, including, but not limited to the County, its agents, and employees, shall have the right of immediate access to the Common Area at all times if necessary for the preservation of public health, safety and welfare.

# ARTICLE 8

## MEMBERSHIP AND VOTING RIGHTS

8.01. Governing Body. The Association shall be the governing body for all owners with respect to the management, administration, maintenance, repair and replacement of the Property, as provided by this Declaration and the Bylaws.

8.02. Membership. Membership in the Association shall be composed of and limited to Owners. Each Owner, including Declarant, shall automatically be a Member of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Upon termination of ownership, an Owner's membership shall automatically terminate and be automatically transferred to the new Owner of the Lot.

8.03. Voting. The Association shall have two classes of voting membership.

Class A. Class A Members shall be all Owners with the exception of Declarant and Builder; provided, however, that Declarant shall become a Class A Member when its Class B membership ceases as provided hereinafter and Builder shall become a Class A Member 120 days from the time a residence constructed on a Lot is issued a certificate of occupancy. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an ownership interest in any Lot, all such persons shall be Members, but no more than one vote shall be cast with respect to any Lot. The vote for any such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves. In the event of disagreement, the decision of Members holding a majority of interest in such Lot shall govern. Unless otherwise notified by a co-owner as to a dispute between the co-owners regarding their vote prior to the casting of that vote, the vote of any co-owner shall be conclusively presumed to be the majority vote of the Owners of that Lot.

Class B. Declarant shall be a Class B Member. Declarant shall be entitled to three (3) votes for each Lot owned including each lot as shown on said plats referenced hereinabove (a total of 81 Lots) and any additional lots that may be added in subsequent phases. Declarant's Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier:

(1) when the total number of votes of the Class A Members equals the total number of votes of the Class B Members; provided, that the Class B membership shall be reinstated with all rights, privileges and responsibilities, if after conversion of the Class B membership to Class A membership hereunder, additional land containing Lots is annexed to the existing property; or

(2) on December 31, 2024; or

(3) when Declarant, at its option, so determines.

8.04. Commencement of Voting Rights. Voting rights attributable to an ownership interest shall not vest until the assessment against that interest has been levied by the Association as provided in Article 9; provided, however, that voting rights shall be immediately vested with respect to amendments to this Declaration pursuant to Section 15.08. Declarant's voting rights as set out herein shall vest upon the filing of this Declaration.

8.05. Declarant's Voting Rights. No requirement for the approval of a prescribed majority of the Voting Power of Members of the Association other than Declarant for action to be taken by the Association is intended to preclude Declarant from casting votes attributable to Lots owned by Declarant.

8.06. Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any person, whether or not an Owner, on the Board of Directors of the Association and any officer or officers of the Association until ninety (90) days after the first of the events to transpire outlined in Section 8.03 concerning the termination of the Class B Member status of Declarant or the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if it then owns one or more Lots; and a special

meeting of the Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Association as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section.

#### ARTICLE 9

##### COVENANTS FOR ASSESSMENTS

9.01. **Covenant to Pay Assessments, Lien.** Every Owner of any Lot (excluding Declarant and Builder, except as provided herein) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay, to the Association such regular annual assessments or charges and such special assessments or charges as may be levied by the Association pursuant to the provisions of this Declaration. No assessment shall be due except with respect to Lots shown on a recorded subdivision plat. The amount of any such annual or special assessment plus any other charges thereon, such as interest, late charges and costs (including attorney's fees), as such may be provided in this Declaration, shall be and become a lien upon the Lot assessed when the Association causes to be recorded in the official records of the County a notice of assessment, which notice shall state:

- (A) The amount of such assessment and such other charges thereon as may be authorized by this Declaration;
- (B) A description of the Lot against which the same has been assessed; and
- (C) The name of the record owner of the Lot assessed.

Such notice shall be signed by an authorized representative of the Association. Upon payment of such assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association, at the Owner's cost and expense, shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. The lien provided for herein shall be prior to all other liens recorded subsequent to the recording of such notice of assessment. The lien may be enforced by foreclosure in accordance with North Carolina law, or in any, other manner permitted by law. The Association shall have power to purchase the Lot at a foreclosure sale and to hold, lease, mortgage and convey the same.

9.02. **Personal Obligation.** Each regular annual or special assessment, together with any late charges, interest, collection costs and reasonable attorney's fees, shall be the personal obligation of each person or entity, other than any Mortgagee, who held an ownership interest in the Lot at the time such assessment was levied. If more than one person or entity held an ownership interest in the Lot at such time, the personal obligation to pay such assessment or installment respecting such Lot shall be both joint and several. No Owner may exempt himself from payment of assessments, or installments, by waiver of the use or non-use of common facilities within the area or of any other portion of the Common Area or by abandonment or leasing of his Lot.

9.03. **Use of Assessments.** Regular annual or special assessments paid by Owners shall be used to pay for operation, maintenance, preservation, enhancement, repair and improvement of the Common Area, other purposes reasonably related to the foregoing, and to promote the recreation, health, safety and welfare of the Owners. In addition, such assessments shall be used to pay the cost of administration of the affairs of the Association, including payment of applicable taxes, and for the preservation of the Association's existence, to the extent properly allocable to the performance and exercise of the Association's duties and powers under this Declaration. The foregoing is intended as an authorization to the Association and shall not be construed to require expenditure of Association funds for any particular purpose.

9.04. **Reserve Funds.** Upon the transfer of record title to a Builder, Builder shall pay a one time assessment of \$75,000 which shall be used for Common Area replacements and maintenance, other than ordinary maintenance. Beginning on September 1, 2003 and for each subsequent year, the Board shall adopt a budget to provide funds to be placed in reserves in an amount to be determined by the Board. Funds deposited in reserve for a particular purpose shall be held for that purpose and shall not be expended for any other purpose without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the total Voting Power of the Association, except that if the Board determines that funds held in reserve for a particular purpose exceed an amount reasonably required as a prudent reserve for that purpose, then, without the vote or written consent of Members, the excess may be allocated to any other reserve fund

established by the initial budget of the Association and expended for the purpose for which such other reserve fund has been established.

#### 9.05. Regular Assessments.

Beginning September 1, 2003 the regular annual assessment for each Lot for the first assessment year (the assessment year shall be the calendar year) shall be Eight Hundred Forty and No/100 Dollars (\$840.00) per Lot owned by an Owner, (excluding Declarant and Builder, unless Builder has become a Class A Member as set out in 8.03 above). If the first assessment year shall have fewer than twelve (12) months, the foregoing amounts shall be proportionately reduced. Said assessment shall be due immediately upon the transfer of record title to the Owner and thereafter as the board shall fix as set out below.

The Board shall fix the amount and due date of the regular annual assessment on a yearly basis at least fifteen (15) days in advance of each assessment year provided that the Board may not impose a regular annual assessment which is more than ten percent (10%) greater than the regular assessment for the immediately preceding fiscal year without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members of the Association or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the Voting Power of the Association. Written notice of the regular annual assessment shall be sent to every Owner who is not present at the time the regular annual assessment is so fixed. If the Board fails to so fix the regular annual assessment, the assessment applicable for the previous assessment year shall remain in effect until the Board shall fix a new regular annual assessment. Regular annual assessments shall be payable annually on the first day of each January or at such other time as the Board may fix. The Association shall, upon demand, and for a reasonable charge, furnish to any person having a legitimate interest a certificate signed by an officer of the Association stating whether the regular annual assessment and special assessments, if any, on a specified Lot have been paid and, if not, the amount due.

9.06. Special Assessments. In addition to the regular annual assessments authorized herein, the Board may levy, in any assessment year, a special assessment against all Owners, excluding Declarant and Builder unless Builder has become a Class A Member as set out in 8.03 above, applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements and related fixtures and personal property on or comprising a part of the Common Area; provided in any fiscal year, special assessments which exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may not be levied without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members of the Association or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the total Voting Power of the Association.

9.07. Assessment as Remedy. After Notice and Opportunity for Hearing, the Board, without the vote or written consent of Members, may levy a special assessment against an Owner as a remedy to reimburse the Association for costs (including attorneys' fees) incurred in bringing the Owner, his Lot or his residence into compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations.

9.08. Allocation of Assessments. Except as otherwise provided in this Declaration all regular and special assessments shall be levied equally against all Owners, except Declarant or Builder.

9.09. Commencement of Assessments. The regular annual assessments provided for herein shall commence as to all Lots at the discretion of the Board, but not later than January 1, 2000. The first assessment year shall be the period commencing on the date regular annual assessments commence and ending on the December 31 next following. The regular annual assessment for the first assessment year shall be provided from the amounts fixed by the Board for a full twelve-month year, based on the number of months to be contained in the first assessment year. Subsequent assessment years shall be each successive calendar year, provided, however, that at any time the Board may change the assessment year to correspond to a fiscal year selected by the Board.

9.10. Revised Assessments. Subject to the provisions of Section 9.05, if at any time during the course of any year the Board shall deem the amount of the regular annual assessment to be inadequate or over adequate by reason of a revision of its estimate of either expenses or income or otherwise, the Board shall have the right, at a regular or special meeting, to revise the regular annual assessment for the balance of the assessment year. Any such revised assessment shall become effective on the first day of the month next following the date of adoption, and additional amounts payable shall be due (or refunds of overages shall be made by the Association) at such time as determined by the Board.

9.11. Delinquent Assessments, Fines. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. The Board may require that any delinquent assessment bear a late charge to cover administrative expenses incurred as a result of the late payment of the assessment. Late charges on delinquent assessments and fines levied as provided in Section 4.09 shall not exceed the following rates compounded and compounded on the outstanding balance, which shall include any late charges previously assessed and unpaid, from month to month:

(A) On so much of the outstanding balance as does not exceed one thousand dollars (\$1,000), one and one-half percent (1.5%).

(B) If the outstanding balance is more than one thousand dollars (\$1,000), one percent (1%) on the excess over one thousand dollars (\$1,000) of the outstanding balance.

(C) If the late charge so computed is less than twenty-five dollars (\$25) for any month, twenty-five dollars (\$25).

No charge may be imposed more than once for the delinquency of the same payment, provided, however, that the imposition of a late charge on any delinquent payment shall not eliminate or supercede charges imposed on prior delinquent payments. When an assessment is paid more than fifteen (15) days after the due date of the assessment, late charges shall accrue from the first day following the due date of the assessment. The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment or fine and, after Notice and opportunity for Hearing, the Association may suspend a delinquent Owner's membership rights in the Association while the assessment or fine remains unpaid. In any legal action to enforce payment of an assessment or fine, the Association shall be entitled to recover interest, costs and reasonable attorney's fees. In the event an attorney is employed to collect payment, a legal fee shall be considered reasonable as follows: (i) if collection is made after a single contact by the attorney, \$300.00; (ii) if suit is filed: \$600.00; (iii) if judgment is obtained by default: \$800.00; (iv) if judgment after trial, in the discretion of the Court.

## ARTICLE 10 INSURANCE

### 10.01. Duty to Maintain Insurance.

(a) Coverage by Owners. Each Owner shall procure and maintain fire and extended coverage insurance on his or her single-family detached or attached residential dwelling, and, upon request, shall provide the Association with proof of such coverage:

- (i) Each single-family detached or attached residential dwelling and other improvements upon a Lot shall be insured in an amount equal to one hundred percent (100%) of their replacement value. Such coverage shall provide protection against (a) loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief and (b) such other risks from time to time as are customarily covered by homeowners fire and extended coverage policies.

Such policies shall contain clauses providing form waiver of subrogation.

- (ii) Liability. Each Owner shall procure and maintain homeowner's liability insurance in an amount as is customary but in no event less than Three Hundred Thousand and No/100 Dollars (\$300,000.00).

All such policies shall name the Association as an additional insured as its interest appears and copies of said policies and renewals thereof shall, upon request, be furnished to the Association. Upon failure by any Owner to obtain and pay the premium for a policy insuring the Owner's residence and improvements, the Association may, but is not required to (and shall have no liability to any Owner or other party for failure to) obtain the policy and pay the premium thereof, and shall bill such Owner for such premium amount as an individual assessment against such Owner.

Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

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(b) **Common Area Coverage by Association.** All buildings and improvements upon the Common Area and all personal property of the Association included in the Common Area or otherwise owned by the Association shall be insured in an amount equal to one hundred percent (100%) of their insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

- (i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;
- (ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and
- (iii) Such policies shall contain clauses providing for a waiver of subrogation.

All insurance policies upon the Common Area shall be purchased by the Association for the benefit of all the Association and the Owners and their mortgages as their interest may appear, and provisions shall be made for the issuance of mortgage endorsements to the mortgages of Owners.

(c) **Association Liability Coverage.** Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and No/100 (\$1,000,000.00) Dollars per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner, the Association, its directors and officers. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.

(d) **Premiums.** Premiums for insurance policies purchased by the Owners shall be paid directly by each Owner to the insurance company providing coverage. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the annual assessment described herein.

(e) **Proceeds of Association Policies.** All insurance policies purchased by the Association shall be for the benefit of the Association, the Owners and their mortgages, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgages in the following trusts:

- (i) **Proceeds on account of damage to Common Area and facilities** are to be held for the Association.
  - (ii) If, due to insured casualty occurring on the Common Area, proceeds are payable on account of damage to Lots, such proceeds shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association.
  - (iii) In the event a mortgage endorsement has been issued for any Lot, the share of the proceeds of the Owners shall be held in trust for the mortgage and the Owners as their interests may appear.
- (f) **Subrogation.** Each insurer shall waive its right to subrogation under any policy maintained pursuant to the provisions herein against any Owner or member of Owner's household.
- (g) **Act or Omission of Owner.** No act or omission of any Owner, unless such Owner is acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under any of the policies maintained pursuant to the provisions herein.
- (h) **Other Insurance.** If, at the time of a loss, there is other insurance in the name of an Owner covering the same risk covered by the Association's policy, the Association's policy shall provide primary insurance.
- (i) **Issuance of Certificates of Cancellation.** Any insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurer issuing an insurance policy under this Section may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

**Section 1. Distribution of Insurance Proceeds.** Proceeds of insurance policies received by the Association as insurance trustee shall be distributed in the following manner:

(a) **Expense of the Trust.** All expenses of the insurance trustee shall be first paid or provisions made therefor.

(b) **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost of repairs to the Common Area and, if applicable due to insured casualty occurring on the Common Area, proceeds on account of damage to Lots shall be paid to defray the cost of repair to the Lots. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners as provided in Section 16(M).

**Section 2. Fidelity Insurance or Bond.** All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated. Premiums for such insurance shall be included as part of the annual assessment described herein.

**Section 3. Obligation to Rebuild.** Should any portion of a single-family detached or attached residential dwelling be damaged or destroyed, the Owner of such dwelling shall repair or replace it promptly in accordance with the original construction plans and specifications unless (i) the planned community and this Declaration are terminated or (ii) repair or replacement would be illegal under any state or local health, environmental or safety statute or ordinance. The cost of repair or replacement of said dwelling or of any other improvements on a Lot, in excess of the proceeds of insurance, is the sole responsibility of the Owner of such damaged dwelling and other improvements. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the planned community and this Declaration are terminated, (ii) repair or replacement would be illegal under any state or local health, environmental or safety statute or ordinance or (iii) each Class of Owners decides at a duly called meeting not to rebuild by an eighty percent (80%) or more vote of each Class of Owners. The cost of repair or replacement of Common Area in excess of insurance proceeds and reserves is a common expense. If any portion of the Common Area is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Property and (ii) the remainder of the proceeds shall be retained by the Association as part of its reserve fund.

#### ARTICLE 11

##### DAMAGE AND DESTRUCTION

**11.01. Damage to Lots.** Subject to the provisions herein, restoration and repair of damage to any Lot and improvements thereon shall be made by and at the expense of the Owner thereof.

**11.02. Repair, Restoration, Reconstruction.** If damage occurs, the Association shall promptly contract for the repair, restoration or reconstruction of the Common Area or improvements which have been damaged or destroyed and apply any proceeds of insurance as received toward cost of such repair, restoration or reconstruction. The difference, if any, between the insurance proceeds payable by reason of such damage and the cost of such repair, restoration and reconstruction may be recovered by one or more special assessments levied by the Board equally against all Owners.

**11.03. Damage by Builders or Owners.** Builders or Owners are responsible for any damage to streets, curbs or sidewalks caused by them, their employees, subcontractors or their agents during construction and shall pay to Declarant or to the Association if after the events set out in Section 8.03 have occurred, the cost of repair and Declarant or Association shall use the payment to complete the repairs.



## ARTICLE 12

### EMINENT DOMAIN

12.01. Eminent Domain. If all or any portion of the Common Area is taken by action in eminent domain (hereinafter called a "taking"), the Association shall give written notice of the proceedings to all Owners and Mortgagees, and the condemnation award shall be fairly and equitably apportioned among the Owners, Mortgagees, and the Association as the court may determine. A condemnation award which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each affected Owner shall be allocated first to the repair, restoration and reconstruction of any remaining portion of the Common Area and then any excess shall be distributed equally among the affected Owners (or any Mortgagee of an Owner to the extent such Mortgagee is entitled to such Owner's share of the proceeds). If requested by the court, an Insurance Trustee shall be employed to make disbursement of the award.

12.02. Repair, Restoration, Reconstruction. If only a portion of a Common Area facility is taken, the Board shall promptly contract for the repair, restoration or reconstruction of the Common Area facility to a complete architectural unit, to the extent such repair, restoration and reconstruction is reasonably necessary and practical. If the cost of repair, restoration and reconstruction of the Common Area exceeds the amount awarded by the court for such purposes, the difference may be recovered by a special assessment levied equally against all owners.

## ARTICLE 13

### ARCHITECTURAL CONTROL

13.01. Architectural Control. NO BUILDING, POOL, FENCE, WALL, SOLAR PANEL, ANTENNA, DECK, PATIO OR OTHER STRUCTURE OR IMPROVEMENT ON ANY LOT SHALL BE ERRECTED, CONSTRUCTED, DEMOLISHED, OR ALTERED UNTIL AN APPLICATION, INCLUDING PLANS AND SPECIFICATIONS SHOWING THE NATURE, KIND, SHAPE, HEIGHT, MATERIAL, COLOR, AND LOCATION OF THE SAME, SHALL HAVE BEEN SUBMITTED TO AND APPROVED IN WRITING BY THE BOARD OR AN ARCHITECTURAL CONTROL COMMITTEE which has been empowered by the Board to approve such applications and comprised of not less than three (3) and not more than five (5) persons who have been appointed by the Board; provided, however, that no such approval shall be required for alterations to the interior of any residential structure. The Board may require a reasonable fee to accompany each application for approval. If the Board or such architectural control committee, having not theretofore approved or disapproved an application, fails to approve or disapprove an application within ten (10) days following receipt of written notice of failure to act, which written notice is given at least thirty (30) days following receipt of the initial application, the application shall be deemed approved. The restrictions herein contained shall have no application to the development, improvement, maintenance and repair of the Property by Declarant, Builder or by the Association, and neither the Board nor the architectural control committee shall have any power or authority to review or require modifications in plans and specifications for construction or installation of improvements by Declarant or Builder.

13.02. Reconstruction of Residence. In the event of damage or destruction to a residence by fire or other casualty, the Owner shall within four (4) months diligently commence to reconstruct such residence as soon as reasonably possible and substantially in accordance with the original plans and specifications thereof, provided, however, that such residence shall be restored so that the exterior appearances thereof substantially resemble their appearances in form and in color prior to such damage or destruction. Notwithstanding the foregoing, however, any Owner of a damaged residence may request permission from the Board or duly authorized architectural control committee to reconstruct or repair his residence in accordance with revisions in the plans and specifications. The Board or said committee shall grant such requests only in the event that the proposed change or deviation will materially benefit and enhance the entire Project in a manner generally consistent with the plan and development thereof.

13.03. Reconstruction by Association. In the event Owner fails to commence reconstruction within said time, then Association may so reconstruct damaged improvements at the expense of the Owner. Insurance benefits shall be credited against the liability of Owner to the Association.

13.04. Application for Approval. The Architectural Review Committee shall provide forms for submission of plans and forms for specifications for proposed improvements. The time allowed for consideration by the Architectural Review Committee shall commence only when a completed application form, complete plans and specifications, and any review fee established by the Board is delivered to the Secretary of the Board.

# ARTICLE 14 MORTGAGE PROTECTION

14.01. *Interpretation.* In the event any provision of this Article 14 is inconsistent with or contrary to any other provision of this Declaration, the provisions of this Article 14 shall control.

14.02. *Notices.* Any Mortgagee of any Lot, by written notice to the Association setting forth the Lot encumbered, the Owner thereof and the address to which notices may be sent, may request and thereby be entitled to receive written notice from the Association of any default which is outstanding for sixty (60) days or longer by the owner of such Lot in the performance of his obligations under or in compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations, (i) any substantial damage to or destruction of the Common Area, including the improvements located thereon, or, if known to the Association, any substantial damage to or destruction of a Lot, including the improvements located thereon, and (ii) any proposed or threatened taking by power of eminent domain of the Common Area or any portion thereof or of any Lot or portion thereof.

14.03. *Mortgagee's Right to Information.* Upon written request to the Association, a Mortgagee is entitled to: (1) inspect the books and records of the Association during normal business hours, and (2) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Project; and (3) receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.

14.04. *Damage and Destruction Rights.* In the event of substantial damage to or destruction of any Lot or improvements to a Lot or any part of the Common Area, no provision of any document relating to the property shall entitle the Owner of a Lot or other party to priority over such Mortgagee or the Association with respect to the distribution to such Owner of any insurance proceeds.

14.05. *Condemnation Rights.* If any Lot or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation proceedings or is otherwise sought to be acquired by a condemning authority, no provision of any document establishing the Project shall entitle the Owner of a Lot or other party to priority over such Mortgagee with respect to the distribution to such Owner of the proceeds of any award or settlement.

14.06. *Right of First Refusal.* Any right given by an Owner of a Lot to any third person to purchase such Lot before it is offered for sale or sold to any other person (such right commonly known as a "right of first refusal") shall not be binding upon or enforceable against any Mortgagee acquiring such Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, or by acceptance of a deed or assignment in lieu of foreclosure.

14.07. *Subordination.* No provisions contained in this Declaration shall defeat or render invalid the lien of any Mortgage which is made in good faith and for value. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage recorded prior to the date any such assessment becomes due. This subordination shall apply only to assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. Any Mortgagee who acquires title to or comes into possession of a Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against the Lot which have accrued prior to the time such Mortgagee or purchaser acquires title to or comes into possession of the Lot; provided, however, this exception shall not be applicable to any claim for assessments or charges levied by the Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due assessments upon such Lot; and provided further, that except as otherwise provided in this section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Lot shall not relieve a selling owner from personal liability for any assessments which became due and payable prior to such sale, transfer or conveyance, nor relieve such Lot from a duly recorded lien for any such prior unpaid assessment.

14.08. Payments by Mortgagees. Any Mortgagee, after at least ten (10) days' prior written notification to the Association of the terms to be paid and the failure of the Association within such time to make payment, may pay, alone or in conjunction with other Mortgagees, delinquent taxes, liens or assessments which may be or become a charge against the Common Area, or any portion thereof, and any overdue premiums on policies of fire and extended coverage insurance for the Common Area and in the event of a lapse of such a policy of insurance, may pay premiums to secure a new policy. In the event such payments are made, the Mortgagee making such payment shall be entitled to immediate reimbursement from the Association to the extent of the payment made.

14.09. Professional Management. In the event that Declarant or the Association enters into any contract with any person or entity to provide management or maintenance services to the Project, such contract shall not exceed one (1) year and shall provide that the Association shall have the right to terminate the contract for cause or without cause upon thirty (30) days' written notice, without payment of a termination fee.

#### ARTICLE 15

#### MISCELLANEOUS PROVISIONS

15.01. Power to Settle Claims. The Board shall have the power and authority to compromise, settle, release and otherwise adjust claims, demands, causes of action and liabilities in favor of the Association and the Owners, on behalf of the Association and Owners, as the case may be, provided any such claim, demand, cause of action or liability arises out of or relates to a condition or defect common to all or a majority of the Lots or improvements constructed thereon, or to the development, design, construction, condition, repair or maintenance of or damage or injury to or defect in the Common Area or part thereof, and the Association shall have the right and the power to make and receive all payments or other consideration necessary therefor or in connection therewith. For such purposes, the Board shall be, and hereby is, irrevocably appointed attorney in fact to act on behalf of all Owners upon such terms and conditions and for such consideration as may be approved by a majority of the Board.

15.02. Independence of Provisions. The provisions of this Declaration shall be deemed independent and severable. Invalidity or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

15.03. Notices. Notices shall be in writing and shall be addressed as follows: (i) if to an Owner, to the address of his Lot; (ii) if to Declarant, to Bent Creek Developers, LLC c/o Dean Harrell, 2409 Beulah Church Road Matthews, NC 28104; and (iii) if to the Association, to the address of the Property. The Association may designate a different address for notices by giving written notice of such change of address to all owners and to Declarant. Declarant may designate a different address for notices by giving written notice of such change of address to the Association. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association and to Declarant.

15.04. Headings. The headings used in this Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

15.05. Enforcement. The failure of any Owner to comply with the provisions of this Declaration, the Bylaws or the Articles shall entitle the Association, any owner, or any of them, to maintain an action for the recovery of damages or injunctive relief or both, and such persons or entities, or any of them, shall have the right to enforce all limitations, restrictions, covenants, easements, liens, charges, assessments and equitable servitudes imposed by or pursuant to the provisions of this Declaration. Failure to enforce the provisions of this Declaration shall not be deemed a waiver of the right to do so thereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under law.

15.06. Equal Opportunity Housing. This Project provides equal opportunity housing. Each Lot sold shall be sold without regard to the race, creed, color, national origin, ancestry, religion, marital status, age or sex of the purchaser.

15.07. Exhibits. Exhibit A which is attached to this Declaration, incorporated herein and made a part hereof by this reference.

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15.08. Amendments. During any period in which a two-class voting structure is in effect, Declarant may amend this Declaration without the approval of any Member or Mortgagee provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Area as set forth in this Declaration and the amendment does not adversely affect the title to any Lot; however, such amendment must be approved in writing by the Department of Housing and Urban Development and the Veterans Administration if such approval is required. In the event that such amendment would materially and adversely affect the security, title and interest of any Mortgagee, such amendment shall be valid only upon the written consent of sixty-seven percent (67%) of the Mortgagees (based on one vote for each mortgage owned) and the prior written consent of the Department of Housing and Urban Development and the Veterans Administration if such approval is required. Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Declaration or make such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Declaration to be recorded to reflect such changes.

Any other amendments of this Declaration shall require (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members of the Association as such classes are set forth in the Bylaws and this Declaration; or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association; provided, however, that the percentage of the Voting Power (of each class of Members of the Association, and of Members other than Declarant) necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

Notwithstanding anything to the contrary contained in this Declaration, any amendment which establishes, governs, provides for or regulates any one of the following: (i) voting; (ii) assessments, assessment liens or subordination of such liens; (iii) reserves for maintenance, repair and replacement of the Common Area; (iv) insurance or fidelity bonds; (v) right to use of the Common Area; (vi) responsibility for maintenance and repair of the Project; (vii) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (viii) the boundaries of any Lot; (ix) interests in the Common Area; (x) leasing of ownership interests; (xi) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot; (xii) any provisions which are for the express benefit of Mortgagees; or (xiii) any other material amendment shall require (i) if a two class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Association, and the written consent of sixty-seven percent (67%) of the Mortgagees. Any Mortgagee who does not respond within thirty (30) days request by the Association for consent to an amendment of this Declaration shall be deemed to have approved such request.

Notwithstanding anything contrary contained in this Declaration, no amendment shall violate the terms of the Permit or the zoning laws of the Town.

Any instrument amending this Declaration must contain a certification by the Secretary of the Association that the amendment has been correctly adopted in accordance with the provisions of this Declaration and be recorded in the official records of the County. Any such amendment shall be effective upon the date of recordation.

IN WITNESS WHEREOF, Declarant has executed and sealed this Declaration as its act and deed this 2<sup>nd</sup> day of December, 2003.

CURRY PLACE, INC.

By: 

President

RICK DUNCAN CONSTRUCTION INC.

By: 

STATE OF NORTH CAROLINA

COUNTY OF UNION

James S. Stanley, a Notary Public, certify that  
James Richard Duncan personally came before me this day and acknowledged that  
he/she is the President of CURRY PLACE, INC., and that he/she, as  
President being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal this 20 day of December, 2003.

Patricia S. Stanley  
Notary Public



12/24/2003

STATE OF NORTH CAROLINA

COUNTY OF UNION

The foregoing certificate of Patricia S. Stanley, Notary (ies)  
Public of Union County North Carolina, is/was hereby certified to be correct. This instrument  
was presented for registration and recorded in this office in Book 3289, page 80.

This 5th day of December, 2003, at 1200 o'clock P.m.

JUDY A. PRICE

Register of Deeds

By: Elizabeth Cook  
Dugan