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 EDGECOMBE COUNTY, NORTH CAROLINA  
 Vila R. Anderson Register of Deeds  
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**DECLARATION OF  
 COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE  
 FLAGMARSH HILLS SUBDIVISION, SECTION 7**

THIS DECLARATION is made on the date hereinafter set forth by Kenneth H. Smith (hereinafter referred to as "Declarant"):

**W I T N E S S E T H:**

WHEREAS, Declarant is the owner of certain real property located in Edgecombe County, North Carolina, which is more particularly described on Exhibit "A" attached hereto and made a part hereof by reference (hereinafter sometimes referred to as the "Property/Properties"); and

WHEREAS, Declarant desires to create on such property an exclusive residential community of single-family homes to be known as Flagmarsh Hills Subdivision, Section 7 (hereinafter sometimes referred to as "Subdivision"); and

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the common area, within the Subdivision and desires to create a planned community pursuant to the provisions of Chapter 47F of the General Statutes of North Carolina (the "Act"), and to subject all of the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the common area, (as hereinafter defined), to administer and enforce covenants and restrictions applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a non-profit corporation, the Flagmarsh Hills Subdivision Owners Association, Inc., for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, Declarant declares that the Properties, Common Area and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, all of which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "Act shall mean and refer to Chapter 47F of the General Statutes of North Carolina, designated as the North Carolina Planned Community Act.

Section 2. "Association" shall mean and refer to the Flagmarsh Hills Subdivision Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 3. "Builder" shall mean and refer to any persons, firms or entities to whom or which Declarant conveys one or more Lots within the Properties for the purpose of constructing a Dwelling thereon.

Section 4. "Common Area" shall mean and refer to any and all real property, together with any improvements thereon, shown on any recorded subdivision plat of the Properties, with the exception of any Lots, as said term is defined in this Declaration. Except as otherwise provided in this Declaration, the Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use as set forth herein.

Section 5. "Declarant" shall mean and refer to Kenneth Smith. It shall also mean and refer to any person, company or entity to whom or which Declarant shall assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the applicable public registry for Edgecombe County, North Carolina.

Section 6. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision plat of the Properties. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of new subdivision plats, any newly-platted Lot shall thereafter constitute a Lot.

Section 7. "Member" shall mean and refer to every person or entity who or which holds membership in the Association.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 9. "Properties" shall mean and refer to the property described in Exhibit A to this Declaration and any additional property annexed pursuant to Articles of this Declaration.

Section 10. "Unit" or "Dwelling" shall mean and refer to any building or portion thereof within the Properties which is designated and intended for use and occupancy as a residence by a single family, whether by the Owner of such Unit or by tenants or lessees of such Owner.

**ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION  
AND WITHIN THE JURISDICTION OF  
FLAGMARSH HILLS SUBDIVISION OWNERS ASSOCIATION, INC.**

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, used and occupied subject to this Declaration as of the date of recording hereof, which is within the jurisdiction of the Association, and which is described on Exhibit A attached hereto.

Section 2. Annexation of Additional Property. At any time prior to December 31, 2030, additional land may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed. Furthermore, at any time Declarant owns any Lot within the Properties, additional may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed. Any property annexed must be contiguous to property already subject to this Declaration. Any property annexed pursuant to this subsection may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

A supplementary declaration may contain such complementary additions to and modifications of the covenants and restrictions contained in this Declaration, including, without limitation, different voting rights and different annual and special assessments for the Lots or Units so annexed, as Declarant, in its sole discretion, may deem necessary or appropriate to reflect the different character or use of the property added. In no event, however, shall any supplementary declaration revoke, modify or add to the covenants and restrictions established by this Declaration so as to materially and adversely affect any portion of the Properties already subject to this Declaration. A supplementary declaration annexing additional property need only be executed by the Declarant and, if applicable, by the owner of the property being annexed, and shall not require joinder or consent of the Association or any of its Members.

Nothing contained in this Article shall be construed to obligate or require Declarant to make any additions to the Properties.

Section 3. Conveyance of Common Area in Annexed Property. Promptly upon request of Declarant, the owner of the annexed property shall convey any or all Common Area located within the newly annexed property to the Association or, if requested by the Declarant, to the Declarant. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

Section 4. Merger. Additional property may also be made subject to this Declaration by merger or consolidation of the Association with another non-profit corporation formed for the same or similar purposes in accordance with the provisions of Sections 2-121 of the Act. The surviving or consolidated association shall administer the covenants and restrictions established by this Declaration within the Properties and the covenants and restrictions established upon property owned by the other association as one scheme. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

Section 5. Effect of Addition of Property. Except by amendment of this Declaration as provided in Section 3 of Article XI hereof, no addition of property, whether by annexation, merger or consolidation, shall revoke or modify any provision of this Declaration as to the Properties already subject hereto or diminish the rights of the Owners of Lots and Units within the Properties, except for the dilution of voting strength that occurs as a result of inclusion of additional Members of the Association.

Section 6. Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex Additional Property pursuant to this Article for the purpose of removing any portion of the Properties then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Subdivision, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Subdivision.

Section 7. Good Faith Lender's Clause. Any violation of these covenants, conditions or restrictions shall not affect any lien or deed of trust of record held in good faith, upon any Lot or commercial Unit, which liens may be enforced in due course, subject to the terms of this Declaration.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots and may not be separated from ownership of any Lot.

There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Ownership of a Class A Lot shall entitle the Owner of such Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been converted to Class A Lots as set forth below. Declarant shall each be entitled to twenty (20) votes for each Class A Lot it owns. The Class B Lots shall cease to exist and shall be converted to Class A Lots upon the earlier of the following to occur: (i) when no Declarant owns any Lots or Units within the Properties; or (ii) upon written waiver of Class B membership by the Declarant. When the Class B Lots cease to exist and are converted to Class A Lots, Declarant shall have the same voting rights as other Owners of Class A Lots.

(c) Declarant's Voting Rights. Until the Class B Lots cease to exist, as provided above, Declarant shall be vested with the sole voting rights of the Association on all matters (including election and removal of directors and officers of the Association), except such matters as to which the Declaration, the Articles of Incorporation, or the Bylaws of the Association specifically require a vote of the Class A Members.

### ARTICLE IV PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by the provisions of this Section 1 and by the rules and regulations adopted by the Board of Directors of the Association, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Areas, if any, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association to suspend the voting rights of an Owner subject to a hearing or opportunity to present evidence in accordance with Section 47F-3-107.1 of the Act for any period during which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

(c) the right of the Association to dedicate, sell or transfer all or any part of the Common Area to any public or quasi-public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. After Class B Lots cease to exist, no such dedication or transfer shall be effective unless the Members entitled to at least 80% of the vote, of the entire membership of the Association and at least three-fourths (3/4) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed document recorded in the applicable public registry for Edgecombe County, North Carolina. Nothing herein shall be deemed to prohibit the Board of Directors of the Association, without consent of the Members, from granting easements over and across the Common Area to any public agency, authority or utility for the installation and maintenance of sewage, utility (including cable television) or drainage facilities when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of properties within the Subdivision. Notwithstanding anything herein to the contrary, the Common Area shall be preserved for the perpetual benefit of the owners of Lots within the Subdivision and shall not be conveyed except to a governmental entity or another non-profit corporation organized for similar purposes.

(d) the right of the Association, to borrow money and, after Class B Lots cease to exist, with the assent of Members' entitled to at least 80% of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Members and the Association as set forth herein.

(e) the right of the Association to exchange all or part of the Common Area for other property and consideration of like value and utility, provided, however, that, after Class B Lots cease to exist, any such dedication shall require the assent of the Members as set forth in subparagraph (c) above, and further provided that, if the Board of Directors of the Association determines, in its sole discretion, that such exchange is necessary to cure an encroachment or setback violation on any Lot, the Board may effect such exchange without the consent of or approval by the Members.

(f) the right of the Association to open the Common Area and, in particular, the recreational facilities constructed thereon, for use by non-members of the Association.

(g) the right of the Association to expand or add to the Common Area and to improve, maintain and operate the Common Area.

(h) the right of the Association to adopt, promulgate and enforce rules and regulations concerning the use' of the Common Area.

(i) the right of the Association to otherwise deal with the Common Area as provided in the Articles of Incorporation and Bylaws of the Association.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties in Edgecombe County, North Carolina.

(b) Tenants: Contract Purchasers. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be assigned by such Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Edgecombe County, North Carolina. So as not to overburden the use of the Properties, if an Owner assigns said right and easement of enjoyment and access to Owner's tenants or contract purchasers, then so long as such assignment is in effect, Owner shall forfeit his right and easement of enjoyment and access.

(c) Guests. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

(d) Suspension of Rights. The rights of any delegate or assignee of an Owner shall be suspended by, upon and during suspension of such Owner's rights as provided in Section 7 of Article XIII of this Declaration.

Section 3. Conveyance of Common Area To The Association. No later than the time Declarant no longer exercises voting control over the Association as provided in Article III hereof, Declarant shall convey, and the Association shall accept, fee simple title to all Common Area (except Common Area easements) within the Properties, and shall reserve for or grant to the Association all Common Area easements, all subject to such easements, reservations, conditions and restrictions as then may be of record, and the Association shall accept all such conveyances, grants and reservations, provided, however, that so long as Declarant owns any Lots within the Properties, Declarant reserves an easement over and across any Common Area deeded to the Association for the purpose of constructing and maintaining any improvements on the Common Area as it deems necessary or advisable, provided that any such improvements must comply with the requirements of the appropriate governmental authority. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements.

Section 4. Regulation and Maintenance of Common Area and Common Area Easements. It is the intent of the Declarant that the Common Area be preserved for the perpetual benefit of the Owners.

(a) Regulation of Common Area. The Association may adopt and promulgate rules and regulations governing the use of the Common Area by Owners and their family, tenants, guests and invitees. No Owner or other permitted user shall use the Common Area or any portion thereof in violation of the rules and regulations contained in this Declaration or subsequently adopted by the Association.

Without limiting the generality of the foregoing, no Owner or tenant, guest or invitee of an Owner shall, without the specific prior written consent of the Association: (i) damage or waste the Common Area or improvements thereon or remove any trees or vegetation therefrom; (ii) erect any gate, fence, structure or other improvement or thing on the Common Area; (iii) place any garbage receptacle, trash or debris on Common Area; (iv) fill or excavate any part of the Common Area; (v) landscape or plant vegetation on Common Area; or (vi) use the Common Area or any part thereof in

a manner inconsistent with or in any way interfering with the rights of other Owners.

(b) Rights and Responsibilities of the Lot Owners as to Common Area Easements. Each Owner of a Lot upon which a Common Area easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area easement.

(c) Rights and Responsibilities of the Association as to Common Area. The Association shall have the right and obligation to ensure that the Common Area is preserved for the perpetual benefit of the Owners, and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its use by the Owners, subject to the provisions of this Declaration; (ii) procure and maintain adequate liability insurance covering the Association and its Members, Directors and Officers, against any loss or damage suffered by any person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area, and adequate hazard insurance covering the real and personal property owned in fee by the Association; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

(d) Declarant's and Association's Right of Entry. The Declarant and the Association and the employees, agents, contractors and subcontractors of each, shall have a non-exclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area easement for the purposes of: (i) installing and maintaining subdivision entrance signs, features, fencing and landscaping; and (ii) making such improvements to the Common Area; and (iii) maintaining the Common Area easement in its natural or improved state.

## ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 9 of this Article V and all costs of collection, including reasonable attorney's fees, shall be a charge against and, a continuing lien upon the Lot against which such assessment is made subject to §47F-3-116 of the Act, as amended. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, subject to notice provided in §47F-3-116(e) of the Act, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

It is the intent of the Declarant that any monetary fines imposed against an Owner pursuant to the Bylaws of the Association or in this Declaration and subject to §47F-3-107.1 of the Act shall constitute a lien against the Lot of such Owner to the same extent as if such fine were an assessment against such Lot.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Subdivision and, in particular, for: (i) acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) repair and reconstruction of

improvements on, the Common Area and entrance signs, if any, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (iv) procurement and maintenance of insurance in accordance with the Section 4(c) of Article IV of this Declaration; (v) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (vi) payment of principal and interest on funds borrowed for Association purposes; (viii) such other needs as may arise; and (ix) payment for the maintenance and operation of street lights. The Declarant reserves the right to subject the real property in this subdivision to a contract with an electric company for the installation of street lighting, which requires a continuing monthly payment to that electric company by each residential customer. Said monthly payment shall be included in the assessments charged to each Owner.

### Section 3. Annual Assessments.

(a) Maximum Annual Assessment. Declarant shall establish the Maximum Annual Assessment and initial annual assessment for Class A Lots; thereafter, the terms "Maximum Annual Assessment", "Annual Assessment", and "Special Assessment" shall mean the Maximum, Annual and Special assessments applicable to Class A Lots. Until May 1, 2022, the Maximum Annual Assessment shall be \$300.00 per year for each Class A Lot.

For so long as a Class B Lot(s) exists, the Board of Directors, in its sole discretion, shall have the authority to adopt an annual budget without a vote of the membership. Once Class B Lots cease to exist, the Maximum Annual Assessment may be increased by the Board of Directors effective January 1 of each year without a vote of the Members, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the Maximum Annual Assessment for the previous year unless such increase is approved as set forth in Section 3(b), below.

(b) Annual Assessments: Ratification of Budgets. After Class B Lots cease to exist, the Board of Directors shall adopt a proposed budget (including the proposed annual assessment for each Class of Lots) at least annually. Within 30 days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than 10 days nor more than 60 days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. Except as required by Section 7 below, there shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than 10% larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least 80% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Any annual assessment ratified by the Members shall continue thereafter from year to year as the annual assessment until changed by the Board and ratified by the Members as set forth herein.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in



whole or in part, the cost of any construction, repair or replacement of a capital improvement on the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article.

Section 5. Assessment Rate: Collection Period. Except as provided in Section 6 of this Article V, the annual and special assessments shall be fixed at a Uniform rate for all Lots within each subclass of Lots and may be collected on a yearly, semi-annually, quarterly or monthly basis, as determined by the Board of Directors.

Section 6. Declarant's and Builders Assessments. Notwithstanding any other provision of this Declaration or the Bylaws of the Association, the Declarant or any Builder shall not be obligated for, nor subject to, any annual or special assessment for any Lot or other property that it owns within the Properties, provided, however, that the Declarant shall be responsible for paying the difference between: (i) the operating expenses of the Association; and (ii) the total operating revenues of the Association from all sources including, without limitation, annual and special assessments, revenues generated from fees charged by the Association for use of the Common Area, and investment income (said difference being hereinafter referred to as the "Operating Deficit"). For purposes of this Section, the term "operating expenses" shall not include contributions to any reserves for replacement, operating reserves, depreciation reserves, capital expenditures, or special assessments.

Declarant may, by written notice given by the Declarant to the Association on or before November 30 of any year, to be effective as of January 1, terminate its obligation to pay the Operating Deficit and waive its right to exclusion from assessments. In such event, each Lot owned by the Declarant which contains a Dwelling for which a certificate of occupancy has been issued shall be assessed at the rate of twenty-five percent (25%) of the annual assessment in effect for Class A Lots, as the same may change from time to time. Upon sale of such Lot by Declarant to any other person or entity, such Lot shall be assessed at Class A rate, commencing on the day on which title to such Lot is transferred to such third party. Notwithstanding any other provision of this Declaration, a Lot owned by the Declarant or Builder which contains a Dwelling occupied as a residence (but not as a model or sales center) shall be assessed at the rate applicable to Class A Lots.

Section 7. Notice and Quorum for any Action Authorized Under Sections 3(a) and 4. After Class B lots cease to exist, written notice of any meeting called for the purpose of taking any action authorized under Section 3(a) or 4 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days prior to the meeting. At such meeting, the presence of Members, in person or by proxy, entitled to cast sixty (60%) percent of the votes of the entire membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and if called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

Section 8. Date of Commencement of Annual Assessments: Amount of Initial and Subsequent Annual Assessments: Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to all Lots in any phase on the first day of the month following the conveyance of a Lot or Unit within that phase to an Owner other than the Declarant or a Builder. Unless a lower amount is set by the Board of Directors and ratified by the Members, the first annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of days remaining in the calendar year.

The Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 9. Effect of Nonpayment of Assessments: Remedies. An assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due subject to §47F-3-116 of the Act, as amended. Interest, late payment charges, reasonable attorneys' fees, and the costs of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first mortgage on a Lot. Sale or transfer of a Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessment which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof; but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage.

Section 11. Initial Capital Contribution. At the time of closing of each sale of a Dwelling, including the initial sale of same, a sum of \$300.00 shall be collected from the purchaser of such Dwelling and transferred to the Association as part of its working capital. The purpose of such working capital contributions is to ensure that the Association will have adequate cash available to defray operating costs, meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid pursuant to this Section shall not be considered as an advance payment of any regular or special assessment.

Section 12. Exempt Property. All property dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE VI RIGHTS OF LENDERS

Section 1. Books and Records. Any owner or holder of a first mortgage on any Lot, or its agent, shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, Bylaws, and the books and records of the Association and, upon written request to the Association, and payment of copying and mailing costs, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. After Class B Lots cease to exist and upon written request to the Association, the owner or holder of a first mortgage on any Lot shall be entitled to timely written notice of:

(a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.

(b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

Section 3. Approval of Owners and Holders of First Mortgage. After Class B Lots cease to exist, unless at least seventy-five percent (75%) of the owners and holders of the first mortgages on Lots located within the Properties have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this subsection. Nothing herein shall be deemed to prohibit the Association from exchanging Common Area for other real property of like utility and value as provided in Section 1(c) of Article IV of this Declaration, or to require the approval of such exchange by the holders of first mortgages on the Lots;

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement or reconstruction of the damaged improvements.

Section 4. Payment of Taxes and Insurance Premiums. The owners or holders of first mortgages on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefore by the Association.

## ARTICLE VII EASEMENTS

Section 1. Access and Utility Easements. Easements for the installation and maintenance of roadways, driveways, walkways, water, gas, telephone, cable television and electric power transmission lines, sanitary sewer and storm water drainage facilities, and for other public and private utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve or grant easements over the Common Area as provided in Article IV,

Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of thirty (30) years from the date hereof, Declarant reserves, for itself and its employees, agents, successors and assigns, an easement upon and a right of ingress, egress and regress on, over and under the Properties for the purpose of constructing and maintaining water, sewer, gas, storm water drainage, retention, telephone, cable, television, electric and roadways and other utility facilities to the extent required by any applicable governmental entity or deemed by the Declarant to be necessary or convenient for the development, use and enjoyment of the Properties and the Common Area and for the conduct of construction, sales and marketing activities. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, relocate utility facilities within said easement and take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and otherwise restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to each Owner whose Lot is affected.

Section 2. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot within the Properties for the benefit of applicable governmental agencies for installing, removing, and reading water meters, maintaining and replacing water and sewer facilities, and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection and the delivery of mail.

Section 3. Owner's Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any Dwelling is located closer than five (5) feet from its Lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such Dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which existed prior to the commencement of the work as is reasonably practicable. No fence shall be erected within such area adjoining a Dwelling.

Section 4. Association's Easement and Right of Entry. The Association, for itself and its employees, agents, contractors, subcontractors and invitees, shall have a perpetual access easement over each Lot to the extent reasonably necessary to perform the maintenance to be performed by the Association, including but not limited to landscaping maintenance.

Section 5. Easement Over Common Area. A perpetual, non-exclusive easement over the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to and from parking areas and walkways serving the Properties and to and from adjacent public roads.

## ARTICLE VIII ARCHITECTURAL CONTROL

Section 1. Architectural Approval. The Declarant shall have the sole and absolute right to determine the style and appearance of the Dwellings, including, but not limited to, flags, subject to

Section 47F-3-121 of the Act, flag poles, flag staffs, fences, walls, buildings, outbuildings, garages, storage sheds, mailboxes, lawn decorations, structures of any type or color thereof, grading, landscaping, patio covers and trellises, plans for off-street parking of vehicles and utility layout, and any other improvements to be built or constructed on any Lot (hereinafter individually and collectively referred to as "Improvements").

After occupancy of a Dwelling as a residence pursuant to a certificate of occupancy or other similar certificate issued by the appropriate governmental authority, no Improvements (including, without limitation, replacement of any previously existing Improvements) shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereof be made (including, without limitation, changing materials or color of any exterior portion of any such Improvements), nor shall a building permit for such Improvements or change be applied for or obtained, until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Association or by an Architectural Review Committee ("ARC") composed of three or more persons appointed by the Board of Directors of the Association. If the Association or its designee fails to approve or disapprove such proposed Improvements within 60 days after complete plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. The Association shall have the right to charge a reasonable fee for receiving and processing each application.

The Declarant and, after the Declarant no longer owns any Lot or Unit within the Properties, the Association, shall have the right to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and Specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. Neither the Association nor the ARC shall approve any Improvements which it determines, in its sole discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision.

Neither the Declarant, the Association, the Board of Directors, the ARC, nor any member or employee of any of them, shall have any liability to any person or entity by reason of any acts taken or omitted by them, or any of them, in good faith pursuant to this Article.

Section 2. Rules and Regulations. The ARC may from time to time recommend to the Board, and the Board may, in its sole discretion, adopt, promulgate, amend and repeal rules and regulations interpreting and implementing the provisions of this Article VIII, including adoption of detailed architectural guidelines and the imposition of a fee or charge for review of proposed improvements or modifications.

Section 3. Variances. The ARC may recommend to the Board, and the Board may, by the vote or written consent of a majority of the members thereof, allow reasonable variances as to the covenants, conditions or restrictions contained in this Declaration, on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan the improvement and development of the Property. Variances contained in plans that are inadvertently approved by the ARC as part of the proposed improvements shall not be considered as having been approved unless specifically approved by the Board in accordance with the provisions of this Section.

**ARTICLE IX  
RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION**

Section 1. Responsibilities. The Association, subject to the rights of the Owner set forth in this Declaration, shall be responsible for the exclusive management, control and maintenance of the Common Area, if any, and shall keep the Common Area in good, clean and proper condition, order and repair. The Association shall be responsible for the payment of all costs, charges and expenses incurred in connection with the operation, administration and management of the Common Area and the performance of its other obligations hereunder. The Association shall operate and maintain areas designated by the Declarant as a Common Areas, whether or not title to such areas has been formally conveyed to the Association. The Association shall also be responsible for enforcement of the covenants and restrictions contained in this Declaration.

Section 2. Manager. The Association may employ and pay for the services of a person or entity, including the Declarant (the "Manager"), to assist the Association in managing its affairs and carrying out its responsibilities hereunder and such other persons or entities, including attorneys and accountants, as the Association deems necessary or advisable, whether such persons or entities are engaged, furnished or employed by the Manager or directly by the Association. The Association may enter into a Management Agreement for such management services upon such terms as the Board of Directors may deem appropriate. The payment of management fees due to the Declarant may, at Declarant's option, be deferred until such later date as Declarant, in its sole discretion, deem appropriate. Furthermore, any management fees due to Declarant may, at Declarant's option, be credited against any assessments due or to be coming due from the Declarant.

Section 3. Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise, subject to such restrictions, if any, as may from time to time be provided by the Articles of Incorporation or Bylaws of the Association.

Section 4. Insurance: Bonds. The Association shall procure and maintain adequate liability insurance covering the Association. The Association shall also procure and maintain full replacement value hazard insurance on real and personal property owned by the Association, and shall procure and maintain officers', directors' and employees' liability insurance, and such other insurance as it deems necessary or advisable. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of this Declaration. The Association may cause any or all persons responsible for collecting and disbursing monies of the Association to be bonded.

Section 5. Implied Rights. The Association may exercise any other right or privilege and take any action authorized by this Declaration, the Association's Articles or Bylaws, or Act or the North Carolina Nonprofit Corporation Act (Chapter 55A), as from time to time amended, and every other right or privilege reasonably necessary to effectuate the exercise of any right or privilege or the taking of any action authorized herein or therein.

Section 6. Declarant's Reserved Rights: Association's Obligation of Cooperation. The Association shall accept conveyance of any Common Area conveyed to it, in fee or by easement, by Declarant or, at the request of Declarant, by an owner of any property within or to be annexed into the Properties and, upon request of Declarant and without further consideration, shall execute any document necessary to evidence such acceptance.

Until such time as Declarant and Builders have completed all of the contemplated improvements and have sold all of the Lots within the Subdivision:

(a) Declarant shall have the right to alter the boundaries of the Common Area, whether or not it has been previously deeded to the Association, subject to §47F-3-112 of the Act, and provided that such alteration does not substantially, materially and adversely affect the function and use of the Common Area. The Association and each Owner hereby irrevocably appoints the Declarant as his attorney-in-fact to execute and/or deliver any documents, plats, deeds, or other written matters necessary or convenient to accomplish the addition of Common Area or Properties, or both, to create easements as deemed necessary by Declarant, and to adjure the boundary or boundaries of the Common Area.

(b) Neither the Association nor its Members, nor the use of the Common Area by the Association and its Members, shall interfere with or impede the completion of the improvements or the marketing and sale by the Declarant and the Builder of Lots and homes.

(c) Declarant and each Builder shall have the right to make such use of Lots and the Common Area as may facilitate completion of development and sale of Lots and Units by the Declarant and the Builder. Without limiting the foregoing, Declarant shall have the right to maintain or permit the Builder or others to maintain sales offices, model Dwellings and Units, administrative offices, and construction offices (which may be trailers or temporary or permanent buildings), or any or all of same, on Lots or the Common Area. Declarant and the Builder shall also have the right to erect and maintain signs on Lots and/or the Common Area, to bring prospective purchasers upon the Common Area, to use the Common Area for sales and marketing activities for the Subdivision, to grant the right to use the Common Area to a prospective purchasers or any other individual or group, in Declarant's sole discretion, and to conduct any and all other marketing activities deemed appropriate by the Declarant, and to permit the Builder and others to exercise such rights in conjunction with or separate from the Declarant.

(d) Subject to the provisions of Section 1(d) of Article IV of this Declaration, Declarant shall have the right, but not the obligation, to loan money to the Association in such amounts and upon such terms and conditions as to which the Declarant may agree. Payments due to the Declarant under any such loans may, at Declarant's option, be credited against any assessments coming due at any time from the Declarant.

(e) In addition to all other rights of the Declarant, no amendment shall be made to this Declaration, and no rule or regulation shall be adopted, interpreted or enforced by the Association, so as to modify the assessments or other charges applicable to the Declarant or a Builder or assessed against the Lots owned by either, or which shall restrict, impair, or, in Declarant's sole judgment, materially adversely affect the activities of the Declarant or the Builder with regard to construction, use of Common Area and delegation of the right to use the Common Area, or the marketing and sale of Lots by the Declarant and Builder, whether or not such activities are enumerated in the preceding paragraphs, without the express prior written consent of Declarant.

In exercising any of the rights provided or granted under this Article X, neither Declarant, nor the Association shall revoke, modify or amend this Declaration in a manner that reduces the size of the Common Area to less than, the area required by the appropriate governmental authority as of the date of this Declaration.

## ARTICLE X USE RESTRICTIONS

Section 1. Minimum Size of Dwellings. All Dwellings constructed on any Lot shall have a minimum of 1100 square feet of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling, provided, however, that such term does not include garages, terraces, decks, open porches, and like areas; provided, further, that shed type porches, even though attached to the house are specifically excluded from the definition of the aforesaid term "enclosed dwelling area".

Section 2. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 3. No structure of a temporary nature, including but not limited to a trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently, and no trailer, mobile home, tent, shack, barn or other outbuilding shall be permitted to exist on the property as a residence.

Section 4. No mobile home, pre-fab, modular home, package home, or other pre-built home shall be placed on any lot. Any residence built on any lot shall be "stick built" except that pre-fabricated roof trusses and pre-fabricated fireplaces and chimneys may be utilized in a residence built on any lot.

Section 5. Signs. No signs shall be displayed on any Lot or on or within any improvement so as to be visible from the exterior of the improvement with the exception of one sign not more than eight (8) square feet advertising the property for sale, or signs used by a builder, developer, realtor or owner to advertise the property during construction and when for sale. This provision shall not preclude the developer from placing one or more entrance signs. The Association may develop uniform sign standards and specifications to which all Owners must adhere. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant and, with the consent of and upon such conditions as Declarant, in its sole discretion, might impose, a Builder shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area, in connection with the development and sale of the Properties.

Section 6. Animals. No animals, livestock, poultry or reptiles of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of domesticated cats, dogs, and other household pets may be kept provided they are kept within the residence and are not kept, bred, or maintained for any commercial purposes or become a nuisance to the neighborhood. No person owning or having custody of an animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on or in the Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law.

Section 7. Business Use Prohibited. No trade, business, profession, or other type of commercial activity shall be carried on any Lot, except that an Owner or occupant residing in a Dwelling may conduct business activities within the Dwelling so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the properties; and, (d) the business activity is consistent with the residential character of the Properties and does not constitute



a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or, (c) a license is required.

Notwithstanding the foregoing, the Declarant and the agents and employees of Declarant shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices; (ii) maintain fluorescent-lighted or spot-lighted model homes which may be open to the public for inspection 7 days per week for such hours as the Declarant or Builder deems appropriate or necessary; (iii) conduct any other activities on Lots to benefit sales efforts; and (iv) use the parking facilities on the Common Area for parking for its employees and invitees.

**Section 8. Vehicles and Trailers.** No vehicle of any kind shall be parked on any Lot except on a paved parking surface or driveway. No trailer of any kind shall be parked on any Lot except within a garage or behind a fence in the back yard of a Lot concealed from public view. The back yard is defined as that portion of the Lot from the rear corner of a house to the rear lot line placed where it will not be seen from the roadway. No truck or vehicle used primarily for commercial purposes (other than those temporarily present on business), no vehicle in inoperable condition, no unlicensed vehicle, no camper, no boat and no trailer may be parked within the Properties, unless kept inside a garage and concealed from public view. No parked vehicle shall be covered by a "car cover" or other similar covering unless kept inside a garage and concealed from public view. For the purpose of the preceding sentence, the term "kept" shall mean present for either a period of more than ten (10) hours or overnight, whichever is less.

**Section 9. Maintenance of Lots and Improvements.** No lot shall be used or maintained as a dumping ground for trash or rubbish. Each Owner shall maintain in good condition and repair all improvements constructed upon such Owner's Lot, including, without limitation, the Dwelling. No Owner shall change the landscaping, exterior design or color of the Dwelling on such Owner's Lot, including the roof thereof, except in compliance with Article VIII hereof. Each Lot shall be maintained in a neat condition by the Owner thereof. In this context, the word "Lot" shall include that portion of the property from the outside of the structure on the applicable Lot to the adjacent paved road surface. All Lots upon which a Unit or Dwelling has been constructed ("Improved Lots") must have grass lawns; no gravel or similar type lawns are permitted. For Improved Lots, "Neat" shall require, at a minimum, that the lawn be regularly cut and fertilized and that mulched areas be regularly re-mulched and kept weeded so that its appearance is in harmony with the neighborhood. No Owner shall allow the grass on any Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground. For unimproved Lots, "Neat" shall require that the Lot is maintained in a sightly condition, free of debris, rubbish, weeds and high grass and in a prudent and reasonable manner harmonious with that of other Lots within the Subdivision.

**Section 10. Walls, Fences, and Swimming Pools.** All walls, fences, and swimming pools shall be controlled strictly for compliance with this Declaration and architectural standards established by the Declarant or the ARC. The design, materials and placement of all walls, fences and swimming pools shall be approved by the ARC prior to construction pursuant to the approval requirements of Article VIII, Section 1, of this Declaration.

Section 11. Deviations. Declarant at its sole discretion, is hereby permitted to approve deviations to restrictions in Article X in instances where in its judgment, such deviation will not adversely affect the development of the Property as a whole. Such approvals must be granted in writing and when given will automatically amend these restrictions for that certain Lot only.

Section 12. Service Utilities, Fuel Tanks, Wood Piles, Trash. All service utilities, fuel tanks, wood piles and trash and garbage containers are to be enclosed within a fence, wall or plant screen of a type and size approved by the Declarant or the ARC, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision.

Section 13. Ditch Maintenance. Each Owner shall have a duty and obligation to maintain the ditch along the front of their Lot, and in the case of corner lots, along the side abutting roadways, in the same condition as originally installed by the Declarant. The obligation of Owners to maintain the ditch adjacent to any Lot applies regardless of whether that portion of the ditch lies within the right of way, or until accepted by the North Carolina Department of Transportation. In the event any Owner shall fail to do so, the Association after giving such Owner at least ten (10) days' written notice, shall be authorized to undertake such maintenance at the Owner's expense. Provided, however, that if the Declarant still owns property in the Subdivision, whether a developed lot or lots, or a tract or tracts of land for future development, the Declarant shall have the option of maintaining the ditch to its original condition, and the cost of such repairs or replacement shall constitute a lien in favor of the Declarant against the lot adjacent to where the repairs or replacements were effected. If such maintenance is undertaken by the Association or Declarant, the charge therefore and all costs of enforcement and collection shall be secured by a lien against the Lot as provided in Article V hereof.

Section 14. Following the installation of residential street lighting by means of mercury vapor or sodium vapor lighting units within the subdivision, any party or person who may then own, or who may hereafter own, any interest in any lot within the subdivision, shall be obligated to pay to Greenville Utilities Commission or the City of Greenville, North Carolina, the monthly rate per lot (plus applicable North Carolina sales tax) set forth in Electric Rate Schedule No. 4-A, entitled Rural Street Lighting Service, of the Utility Regulations of Greenville, Utilities Commission. The obligation to pay such a monthly rate, as it may change from time to time, shall continue until such time as the subdivision is annexed into the corporate limits of a city, town or village, and responsibility for the cost of street lighting is assumed by, or transferred to, a governmental unit. Any and all mercury vapor or sodium vapor lighting units installed within the subdivision shall be and remain the property of Greenville Utilities Commission.

## ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Further, the Board of Directors shall have the right to record in the appropriate land records a notice of violation of this Declaration or the Bylaws of the Association, or any rules, regulations, use restrictions, or design guidelines promulgated by the Association and to assess the cost of recording and removing such notice against the Owner in violation of the Declaration.

Section 2. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 3. Amendment. For so long as Declarant owns any Lot or Unit within the Subdivision, this Declaration may be amended by the Declarant, without the consent or joinder of any other Owner or the Association. Any such amendment shall be effective upon recording of same in the applicable public registry for Edgecombe County, North Carolina. No amendment shall be binding upon any Lot or Owner until fifteen (15) days after a copy of such amendment has been provided to such Owner.

The covenants and restrictions of this Declaration, and any amendments thereto, are appurtenant to and shall run with and be binding upon the Properties and the Owners thereof for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended by a vote of the Owners as set forth below.

After Class B Lots cease to exist, this Declaration may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots, and thereafter amended by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots, provided, however, that so long as there is Class B membership, no amendment adopted by the Owners shall be effective unless and until such amendment is approved in writing by the Declarant. Amendments shall be by written instrument signed by the appropriate persons or entities and recorded in the applicable public registry for Edgecombe County, North Carolina, and upon recordation, shall be binding on all Lots and Units within the Properties and the Owners thereof, without regard to whether the Owner of such Lot voted for or against or signed or did not sign the amendment.

Section 4. Interpretation. Headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing any provision hereof. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa: the use of one gender shall include all genders; and the use of the word "including" shall mean "including, without limitation". This Declaration and the provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina.

Section 5. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded plat, except by or with the consent of the Declarant and, if required, by the appropriate governmental authority.

Section 6. Declarant's Right To Change Development. With the approval of the appropriate governmental authority, and subject only to such terms and conditions as said authority may impose, Declarant shall have the right, without consent or approval of the Owners, to create Lots and Units, add Common Area, and reallocate Lots or Units within the Properties. Declarant may convert any lot or lots or any other property subject to these restrictions to use as a roadway and/or road right-of-way.

Section 7. Right to Dedicate Streets. In the event that the streets and roadways providing access to Ashbury Subdivision are accepted as public roads by the North Carolina Department of Transportation, then and in that event, the Declarant and/or the Association shall petition the North Carolina Department of Transportation to accept the streets and roadways within the Ashbury Subdivision as public roads.

Section 8. Rules and Regulations: Enforcement. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the

Lots within the Subdivision and shall furnish a written copy of said rules and regulations to the Owners) of each Lot at least fifteen (15) days before such rules and regulations become effective.

In addition to any other rights and remedies that the Association may have under the Bylaws and this Declaration, the Association may impose sanctions for a violation of this Declaration, the Bylaws of the Association, the rules and regulations adopted Association, and any restrictive covenants applicable to the Properties, in accordance with procedures set forth in the Bylaws, and subject to the notice of hearing, evidence; and appeals procedures set forth in §47F-3-107.1 of the Act, which sanctions may include, without limitation, reasonable monetary fines not to exceed One Hundred Dollars (\$100.00), provided that an additional fine of up to One Hundred Dollars (\$100.00) per day may be imposed for each day more than five (5) days after the decision that the violation occurs, which shall constitute a lien upon the Lot of the violator, and suspension of the right to vote and the right to use the Common Area any facilities thereon.

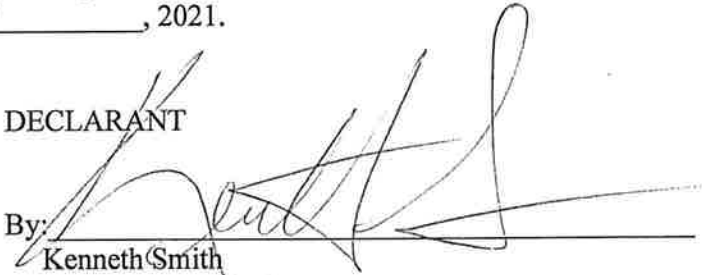
In addition, as provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and Tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Common Area and recreational facility within the Properties if the Owner is more than 30 days delinquent in paying any assessment or other charge due to the Association.

The Association shall at all times have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, incurred in such action.

Section 9. The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

IN WITNESS WHEREOF, the said parties of the first part, have hereunto set their hands and seals, this the 16<sup>th</sup> day of April, 2021.

DECLARANT

By:   
Kenneth Smith

STATE OF NORTH CAROLINA  
COUNTY OF PITT

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

Witness my hand and Notarial Seal, this the 16<sup>th</sup> day of April, 2021.

STEPHEN F HORNE III  
NOTARY PUBLIC  
PITT COUNTY, NC  
My Commission Expires 4-13-2025

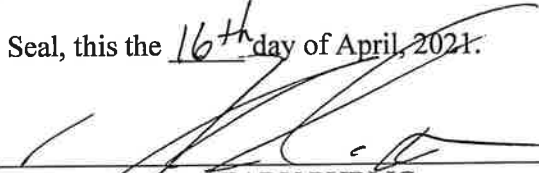
  
\_\_\_\_\_  
NOTARY PUBLIC  
Printed/Typed Name: Stephen F. Horne III  
My Commission Expires: 4/13/2025

EXHIBIT "A"  
Legal Description of Property

Lying and being in No. 12 Township, Edgecombe County, North Carolina, and being all of Lots 1-16 in Block F and Lots 16-32 in Block G of Flagmarsh Hills Subdivision, as shown on map recorded in Plat Cabinet 13, Slide 122-123 Edgecombe County Registry.

(21) 50<sup>sq</sup>-17- Horne & Horne  
300 Cotanche St  
Greenville, NC  
27858