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and the terms of the submitter agreement with the Johnston County Register of Deeds.

## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BENSON VILLAGE**

DRAWN BY AND MAIL AFTER RECORDING TO:

Hankin & Pack, PLLC  
5955 Carnegie Boulevard  
Suite 350  
Charlotte, NC 28209

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**BENSON VILLAGE**

THIS DECLARATION, dated the 8<sup>th</sup> day of January, ~~2023~~<sup>2024</sup> and is made by ABJ Investments, LLC, a North Carolina limited liability company (hereinafter "Developer") and True Homes, LLC, a Delaware limited liability company, (hereinafter "Builder").

**Recitals:**

A. Developer is the owner of all property described on Exhibit "A", attached hereto and made a part hereof (the "Original Tract").

B. Developer desires to subject and impose upon all real estate within the platted areas of the Original Tract, together with all or such portions of the Additional Tract as may hereafter be made subject to the terms of this Declaration as provided herein, mutual and beneficial restrictions, covenants, conditions and charges contained herein contained and as set forth in the Plats (such restrictions, covenants, conditions and charges herein referred to alternatively as the "Declaration" or "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Original Tract, together with all or such portions of the Additional Tract as may hereafter be made subject to this Declaration, and future owners thereof. "Additional Tract" shall mean any property contiguous to the Original Tract that Developer may hereafter subject to this Declaration.

**Terms:**

NOW, THEREFORE, Developer hereby declares that all of the platted lots and lands located within the Real Estate, as defined below, are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the Declaration, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands within the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to the Restrictions, and shall inure to the benefit of Developer's successors in title to any real estate in the Real Estate.

**ARTICLE I**  
**DEFINITIONS**

The following are the definitions of the terms used in this Declaration:

**Section 1.1 "Assessment"** shall mean the share of the Common Expenses imposed on each Lot or other special assessments, as determined and levied pursuant to the provisions of Article V hereof.

**Section 1.2 "Association"** shall mean **Benson Village Homeowners' Association, Inc.**, its successors and assigns, which shall be created as a North Carolina nonprofit corporation.

**Section 1.3 "Board"** shall mean the Board of Directors of the Association.

**Section 1.4 "Builder" or "Builders"** shall mean any homebuilder, developer or other contractor in the business of purchasing Lots or land from Developer for the purpose of building thereon, and selling residential dwelling units to the public.

**Section 1.5 "Code"** shall mean the Code of Ordinances for the Town of Benson and or County of Johnston, as amended and supplemented from time to time.

**Section 1.6 "Committee"** shall mean the Architectural Control Committee, which shall be appointed by the Board and have such duties as provided in Article VI, below.

**Section 1.7 "Common Area(s)"** shall mean those areas and all improvements located thereon which are identified as open space, common area, common open space or similar such language, if any, on the plats.

**Section 1.8 "Common Expenses"** shall mean the actual and estimated cost to the Association of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association.

**Section 1.9 "Development Period"** shall mean the period of time during which Developer or a Builder or owns at least one (1) Lot.

**Section 1.10 "Dwelling Unit"** shall mean and refer to any structure (or portion thereof) designed or intended for use and occupancy as a residence by one (1) family on a Lot located within the Real Estate, irrespective of whether such dwelling is detached or attached to another Dwelling Unit.

**Section 1.11 "Easement Area"** shall mean any portion of the Real Estate, which is subject to an easement as more particularly described in Article III, below.

**Section 1.12 "Lake" or "Lakes"** shall mean and refer to the water detention pond(s) or lake(s), if any, whether or not such are also a Common Area, together with the shoreline area thereof, as shown on the Plats.

**Section 1.13 "Lot" or "Lots"** shall mean any parcel(s) of the Real Estate (excluding the Common Areas) which are designated and intended for use as a building site or developed and improved for use as a single-family residence identified by number on the Plats. No Lot shall be further subdivided for development purposes, except as may be reasonably necessary to adjust for minor side or rear yard encroachments or inconsistencies.

**Section 1.14 "Member"** shall mean any person or entity holding membership in the Association.

**Section 1.15 "Owner"** shall mean the record owner, whether by one or more persons, of the fee simple title to any Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

**Section 1.16 "Real Estate"** shall mean the Original Tract, and all or such portion of the Additional Tract as has, from time to time, been subjected to this Declaration.

**Section 1.17 "Rear Plane"** shall mean that portion of the rear yard of a Lot located directly behind the Dwelling Unit; more specifically, the portion of the rear yard located between the two parallel lines that would be created by drawing a line from each of the two outer rear corners of the Dwelling Unit and extending said parallel lines directly to the rear boundary line of the Lot.

**Section 1.18 "Registry"** shall mean the office of Johnston County Register of Deeds (or any successor office under applicable law). All references herein to recording or to any requirement to record a document or Subdivision Plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Property is situated.

**Section 1.19 "Residential Leasing"** shall mean the regular, exclusive occupancy of a Unit by a party other than the Developer, Developer Affiliate, Builder, Builder Affiliate, or assigns, Owner of the Unit, or members of the immediate family of an Owner, or the principals of an Owner if the owner is not an individual. Occupancy by a roommate of an Owner of a Unit shall not constitute Residential Leasing. Any and all leasing restrictions shall not apply to the Developer, Developer Affiliate, Builder, Builder Affiliate, or assigns and the Developer, Developer Affiliate, Builder, Builder Affiliate, or assigns shall continually have the ability to own and lease any property in the subdivision.

**Section 1.20 "Supplemental Declaration"** shall mean an amendment or supplement to this Declaration or a Plat executed by or consented to by Developer, or by the Association pursuant to Article II, and recorded in the public records of the county in which the Declaration was originally recorded, which subjects all or any portion of the Additional Tract to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the Real Estate or the land described therein. A Supplemental Declaration may also remove any portion of the Real Estate then owned by Developer from the control and provisions of this Declaration.

**Section 1.21 "Stormwater Covenant"** means any covenant recorded in the Registry as required by the Code, or otherwise, relating to Stormwater Facilities for the Property or any part thereof, and includes all amendments and supplements to such agreements.

**Section 1.22 "Stormwater Facilities"** shall have the meaning ascribed to "Facility/ies" set forth in the Stormwater Covenant, together with any one or more of the following devices and measures that serve the Property: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet ponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Property, and which are located outside public street rights-of-way and drainage easements. All Stormwater Facilities are Common Area.

**Section 1.23 "Stormwater Facilities Manual"** means that manual, however named, referenced in the Stormwater Covenant as establishing the requirements for maintenance of Stormwater Facilities.

## **ARTICLE II**

### **DEVELOPMENT OF THE REAL ESTATE**

**Section 2.1 Development of the Real Estate.** All Lots shall be and hereby are restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in this Declaration. Developer shall have the right, but not the obligation, during the Development Period, to submit additional real estate to or exclude any portion of the Real Estate from the provisions of this Declaration, and

to make and maintain improvements, repairs and changes to any Common Area and all Lots owned by Developer, including without limitation: (a) installation and maintenance of improvements in and to the Common Areas; (b) changes in the location of the boundaries of any Lots owned by Developer or of the Common Areas; (c) installation and maintenance of any water, sewer, and other utility systems and facilities; (d) installation of security or refuse systems; and (e) additions or changes to the boundaries of any Common Areas or Easement Areas.

**Section 2.2 Public Streets.** The streets and public rights-of-way shown on the Plats are, upon recording of the Plats, dedicated to the public use, to be owned and maintained by the governmental body having jurisdiction, subject to construction standards and acceptance by such governmental body. All Lots shall be accessed from the interior streets of the Development.

**Section 2.3 Development of Additional Property.** Developer hereby reserves the right and option, to be exercised in its sole discretion and without further approval by any party, to submit at any time and from time to time during the Development Period, additional real estate to the provisions of this Declaration, including but not limited to the Additional Tract. This option may be exercised by Developer in accordance with the following rights, conditions, and limitations:

(a) Additional real estate may be added to the Real Estate at different times, and there are no limitations fixing the boundaries of the portions or regulating the order, sequence, or location in which any of such portions may be added to the Real Estate. No single exercise of Developer's option to submit additional real estate to the Declaration shall preclude any further exercises of this option thereafter and from time to time as to other real estate.

(b) The option to add additional real estate may be exercised by Developer by the execution of a Supplemental Declaration or Plat describing such additional real estate, which shall be filed in the public records of the county in which the Declaration was originally recorded, together with a legal description of the additional real estate. The provisions of this Declaration shall then be construed as embracing the real property described in Exhibit "A" and such additional real estate so submitted to the terms hereof, together with all improvements located thereon.

**Section 2.4 Annexation of Additional Real Estate by Members.** After the Development Period, the Association may annex additional real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of at least two-thirds (2/3) of the Members. Annexation by the Association shall be accomplished by the appropriate filing of record of a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provision of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2.4 and to ascertain the presence of a quorum at such meeting.

**Section 2.5 Withdrawal of Property.** Developer hereby reserves the right and option during the Development Period, to be exercised in its sole discretion and without further approval by any party, to withdraw and remove any portion of the Real Estate then owned by Developer from the control and provisions of this Declaration. Such removal by Developer shall be carried out generally by the execution and filing of a Supplemental Declaration or other document which shall be filed in the public records of county in which the Declaration was originally recorded, together with a legal description of the Real Estate being withdrawn.

### **ARTICLE III**

### **PROPERTY RIGHTS AND EASEMENTS**

**Section 3.1 General.** Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. The Owners of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Developer with respect to this Declaration and also for themselves, their heirs, personal representatives, successors and assigns. Each Owner shall be entitled to the exclusive ownership and possession of his Lot subject to the provisions of this Declaration, including without limitation, the provisions of this Article III. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, a non-exclusive right and easement of enjoyment in and to the Common Areas as established hereunder and membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title any certificates or other evidences of his membership in the Association. Lots shall not be subdivided by Owners and the boundaries between Lots and between the Real Estate and other neighborhoods shall not be relocated, unless the relocation thereof is made with the approval of the Board and, during the Development Period, of Developer.

**Section 3.2 Owner's Easement of Enjoyment.** Every Owner, his family, tenants, and guests shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and subject to the following provisions:

- (a) The Right of the Association, upon the affirmative vote or written consent, or any combination thereof, of voting Members representing at least eighty percent (80%) of the Members entitled to vote thereon, to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage, repair, maintain, improve, operate, or expand the Common Areas; provided, however that if ingress or egress to any residence constructed on a Lot is through such Common Area, then such encumbrance shall be subject to an easement in favor of such Lot for ingress and egress thereto.
- (b) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Real Estate, and the right of the Association to grant and accept easements as provided in this Article III. The location of any improvements, trees or landscaping within an easement area is done at the Owner's risk and is subject to possible removal by the Association or the grantee of such easement.
- (c) The right of the Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to any appropriate public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved (i) during the Development Period, by the Developer; and (ii) after the Development Period, upon the affirmative vote or written consent, or any combination thereof, of voting Members representing at least eighty percent ( 80%) of the Members entitled to vote thereon; provided, however that if ingress or egress to any residence constructed on a Lot is through such Common Area, then such dedication or transfer shall be subject to an easement in favor of such Lot for ingress and egress thereto.
- (d) The rights of the Association and Developer reserved elsewhere in this Declaration or as provided in any Plat of all or any part of the Real Estate.

(e) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

### **Section 3.3 Easements for Developer.**

(a) During the Development Period, Developer shall have an easement for access to the Real Estate, including any Lot and all Common Areas, for the purpose of constructing structures and other improvements in and to the Lots and Common Areas, and for installing, maintaining, repairing, and replacing such other improvements to the Real Estate (including any portions of the Common Areas) as are contemplated by this Declaration or as Developer desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Developer have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Developer at that time retains ownership of a Lot, Developer shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvement thereon for such purposes as Developer deems appropriate, provided that Developer shall not exercise such right so as to unreasonably interfere with the rights of owners of the Real Estate.

(b) In addition to the easement set forth in Section 3.3 (a), Developer hereby retains, reserves and is granted an exclusive perpetual easement over, above, across, upon, along, in, through and under the Utility Easement Areas, as such is defined in Section 3.4, below (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, improving, expanding and otherwise servicing any utility or service including, without limitation, electricity, gas, sewer, telephone, television, and computer link by line, wire, cable, main, duct, pipe conduit, pole, microwave, satellite or any other transfer or wireless technology, and any related equipment, facilities and installations of any type bringing such utilities or services to each Lot or Common Area; (ii) to provide access to an ingress and egress to and from the Real Estate for the purposes specified in subsection (i); and (iii) to make improvements to and within the Real Estate to provide for the rendering of public and quasi-public services to the Real Estate. The easements, rights and privileges reserved to Developer under this Section 3.3(b) shall be transferable by Developer to any person or entity solely at the option and benefit of the Developer, its successors and assigns, and without notice to or the consent of the Association, the Owners, or any other person or entity. Developer may at any time and from time to time grant similar or lesser easements, rights, or privileges to any person or entity. By way of example, but not by limitation, Developer and others to whom Developer may grant such similar or lesser easements, rights or privileges, may so use any portion of the Real Estate to supply exclusive telecommunications services to each Lot. The Easements, rights and privileges reserved under this Section shall be for the exclusive benefit of Developer, its successors and assigns and may not be impaired, limited or transferred, sold or granted to any person or entity by the Association or any of the Owners.

### **Section 3.4 Drainage, Utility and Sewer Easements.**

(a) There is hereby reserved for the benefit of Developer, the Association, and their respective successors and assigns, the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements to and from any of the following providers and their respective successors and assigns, upon, over, under, and across (i) all of the Common Areas; and (ii) those portions of all Lots designated on the Plat as easements for installing, replacing, repairing, and maintaining utility services, including but not limited to those described in Section 3.3.

The Developer, the Association, and their successors and assigns shall also have the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements within the

Utility Easement Areas to and from any public authority or agency, public service district, public or private utility or other person for the purpose of installing, replacing, repairing, maintaining, and using storm sewers, drainage systems, and retention ponds and facilities for the Real Estate or any portion thereof. Any other grant or acceptance of any easement other than those specified above for any other utility service, including but not limited to, master television antenna and/or cable systems, security and similar systems shall be made by Developer in accordance with the rights reserved to Developer under Section 3.3(b), above. To the extent possible, all utility lines and facilities serving the Real Estate and located therein shall be located underground. By virtue of any such easements and facilities, it shall be expressly permissible for the providing utility company or other supplier or service provider, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any fences, trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

(b) Developer hereby grants to such governmental authority or agency as shall from time to time have jurisdiction over the Real Estate with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over, and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in and upon the Real Estate as shall be required or appropriate from time to time by such governmental authorities under applicable law.

(c) There shall be created sanitary sewer easements and other easements in those areas designated on the Plat, which easements shall run in favor of Developer and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps and other equipment necessary for utility services

**Section 3.5 Drainage Easements.** There is hereby reserved an easement for the benefit of Developer, the Association, and their respective successors and assigns for access to and installation, repair, or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate; provided, however, that the Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on his Lot (as shown on any Plat) in the condition originally provided by Developer and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by the Owner without the written consent of the applicable governmental agency; provided, however, that Developer, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

**Section 3.6 Landscape Easements.** Landscape Easements, as designated on a Plat of all or any part of the Real Estate and Landscape Easements reserved within the sight triangles of the Real Estate, are hereby created and reserved for the use of Developer and the Association for access to and installation, maintenance, repair, and replacement of signs, walls, earth mounds, trees, foliage, landscaping, and other improvements. Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, patios, decks, driveways, and walkways, shall be erected or maintained in or upon said Landscape Easements without the written consent of the Board and provided such are in accordance with all applicable zoning laws. Notwithstanding the reservation of this easement, the Owners of Lots subject to any Landscape Easements which do not extend along adjoining streets or roads shall have the exclusive right to use such area, subject to any other easement affecting such Lot.

**Section 3.7 Maintenance Access Easement and Emergency Access Easement:** There may be strips of grounds as shown on the Plat marked Maintenance Access Easement (M.A.E.) and Emergency Access Easement (E.A.E.), which are created and reserved: (a) for the use of the Developer during the Development Period for access to the Common Area and (b) for the nonexclusive use of the Association or any applicable governmental authority for access to the Common Areas. The Owner of any Lot which is



subject to an MAE or EAE shall be required to keep the portion of his Lot which is subject to such easement free from obstructions so that access will be unimpeded.

**Section 3.8 Medians and Entry Features:** There may be landscaped medians and/or islands located within the Real Estate and within the public right-of-way of the streets which are not otherwise labeled as Common Areas or as a Landscape Easement. These areas are created and reserved for installation and maintenance of landscaping and entry features such as but not limited to permanent walls, signs, fences and landscaping material. These landscaped areas and features shall be maintained by the Association as if such were a Common Area.

**Section 3.9 Sales and Construction Offices.** Notwithstanding any provisions or restrictions herein to the contrary, during the Development Period, and for a reasonable time thereafter, there is hereby reserved and created for the use of Developer, and its successors and assigns, and persons constructing improvements within the Real Estate, an easement for access to the Real Estate for the maintenance of signs, sales offices, construction offices, business offices, and model houses, together with such other facilities as in the sole opinion of Developer may be reasonably required, convenient, or incidental to the completion, improvement and/or sale of Lots and the Common Areas.

**Section 3.10 Maintenance Easement.** There is hereby reserved and created for the use of Developer, the Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain a community-wide standard of health, fire safety, and appearance for and within the Real Estate, provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such actions.

**Section 3.11 Cluster Mailboxes.** Developer or Builders may install one (1) or more cluster mailboxes on the Property and may assign a single box in each cluster to each Lot. If cluster mailboxes are installed and assigned to a Lot, then the Owner of said Lot may not install any additional mailbox on its Lot. The Association shall be responsible for the maintenance, repair and replacement (if necessary) of all cluster mailboxes, with any and all costs associated with the same being a common expense paid by the Association. Developer may install, maintain, repair and/or replace cluster mailboxes on any portion of the Common Area or in any easement area shown on any record plat of the Real Estate (including any easement on a Lot if applicable). Notwithstanding the foregoing, if at the time of any conveyance, cluster mailboxes are located on any portion of any Lot, the Association shall have an easement over said Lot as reasonably necessary for maintenance, repair and replacement of the same, and Owners shall have an easement over said Lot as reasonably necessary for accessing the same, regardless of whether or not said easement is shown on a record plat of the Project. Except that the Association shall maintain, repair and replace any cluster mailboxes so as to keep the same in good working order (with each Owner having the duty to report any problems with its mailbox to the Board), neither the Association, the Board, nor Developer shall have any liability relative to condition, operation or access of/to the cluster mailboxes (or any events/actions/occurrences arising from the same or lack of the same) AND BY ACCEPTANCE OF THE DEED FOR ANY LOT, EACH OWNER THEREBY WAIVES ANY OR ALL CLAIMS, ACTIONS AND/OR DAMAGES REGARDING OR ARISING OUT OF THE SAME AGAINST THE BOARD, THE ASSOCIATION OR THE DEVELOPER.

#### **ARTICLE IV**

#### **ORGANIZATION AND DUTIES OF ASSOCIATION**

**Section 4.1 Organization of Association.** The Association shall be organized as a nonprofit corporation under the laws of the State of North Carolina, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Developer, and the By-Laws of the Association.

**Section 4.2 Voting Rights.** The membership of the Association shall consist of two (2) classes of membership with the following rights:

(a) Class A Membership. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot owned by such Member with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. In the event that any Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, each shall be a Member but they shall be treated collectively as one Member for voting purposes, so that as to any matter being considered by the Class A Members, only one (1) vote is cast for each Lot.

(b) Class B Membership. Class B Members shall be the Developer and Builder. Each Class B Member shall be entitled to nine (9) votes for each Lot of which it is the Owner with respect to each matter submitted to a vote of the Association. The Class B Membership shall cease and terminate upon the first to occur of (i) the date upon which the written resignation of the Class B Members as such is delivered to the Association; or (ii) at such time as the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership.

Notwithstanding anything herein to the contrary, during the Development Period all actions of the Association shall require the prior written approval of the Developer.

**Section 4.3 General Duties of the Association.** The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Plats. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

(a) *Maintenance by Association.* The Association shall maintain and keep in good repair the Common Areas. The maintenance shall include, but need not be limited to, maintenance, repair and replacement of all landscaping and other flora, structures, play equipment and improvements, including all private streets situated upon the Common Areas, street lights, landscaping easements along the primary roads through the Real Estate, medians and rights of ways of public streets within the Real Estate, entry features for the Real Estate, and such portions of any other real property included within the Common Areas as may be provided in this Declaration, or by a contract or agreement for maintenance with any other person or entity, by the Association. The Association shall maintain the portions of the storm water drainage system, storm water ponds, retaining walls, head walls, and other structures which are located within the Common Areas, if any, or in any public drainage easement shown on a plat of the Real Estate which are not maintained by any governmental, public or quasi-public entity, including maintaining the water quality and quantity standards of the approved subdivision plans, to the extent required by law. The drainage system, storm water ponds, retaining walls, head walls, and other structures are hereby dedicated to the Association for the purpose of maintaining the storm water system to meet water quality and water design standards of the approved subdivision plans and any future governmental laws, rules and regulations, and an easement is hereby granted to the Association over each Lot to maintain, repair and replace the drainage facilities located with any public drainage easement or elsewhere in the Real Estate, and to remove any improvements interfering with or impairing such facilities or easements reserved herein. If the Stormwater Facilities are not owned or Maintained by the Town, County, or Sub-Association, the Developer reserves the right to require the Association to maintain, operate, repair and replace

the Stormwater Facilities in accordance with the Stormwater Facilities Manual (as defined in the Stormwater Covenant) as an Association expense in order to provide drainage, water storage, conveyance, or other stormwater management capabilities as required by the Town and/or County.

(b) *Maintenance by Owners.* Unless specifically identified herein, each Owner shall maintain and repair the interior and exterior of his or her Lot and Dwelling Unit, and all structures, parking areas, lawns, landscaping, grounds and other improvements comprising the Lot and Dwelling Unit in a manner consistent with all applicable covenants.

(c) *Association's Remedies if Owner Fails to Maintain Lot.* In the event that Developer or the Association determines that: (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair, or replacement of items for which is his responsibility hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, Developer or the Association, except in the event of an emergency situation, may give such Owner written notice of Developer's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner as the case may be, shall have ten (10) days within which to complete such maintenance, cleaning, repair or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provision hereof after such notice, Developer or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost (together with the cost of attorney's fees, if any, in the enforcement of the Owner's obligations and collection of the charge to the Owner) shall become a lien against the individual Owner's Lot (with respect to any matter relating to an individual Owner's responsibility) and such cost shall become a part of the costs of the Association (until such time as reimbursement is received from the individual Lot Owner). In the event that the Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse the Developer for the Developer's costs and expenses, including reasonable attorneys' fees and filing fees.

(d) *Authority and Enforcement.* Upon violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Association shall have the power, after seven (7) days written notice to the Owner or the occupant of said violation, and failure by said Owner or occupant to cure the violation to send a Warning letter to the Owner or occupant. After fourteen (14) days from the initial written notice of violation (the "warning Period") and failure to cure by the Owner or Occupant the Association shall have the power to fine the Owner for the violation until cured, the amount of such fine which shall follow the fine schedule as seen below (the "Fine Schedule"):

1. After fourteen (14) days without cure by Owner - \$100.00 fine.
2. After twenty-one (21) days without cure by Owner – an additional \$100.00 fine (or \$200.00 total).
3. After twenty-eight (28) days without cure by Owner – an additional \$100.00 fine (or \$300.00 total).
4. Starting on the twenty-ninth (29<sup>th</sup>) day without cure, the Owner shall incur a \$20.00 per day fine which shall accrue in addition to the fines set out above.

After initial Warning Period the Association may also, at their own discretion, (i) cause the Association to correct the violation at its own cost and expense, which said cost and expense shall

constitute a continuing lien upon the Lot of the Owner or the occupant who is guilty of such violation; (ii) to suspend an Owner's right to vote in the Association; and (iii) to suspend an Owner or occupant's right (and the right of his or her family, guests and tenants) to use any of the Common Areas.

The Board shall have the power to impose all or any combination of these sanctions. Such sanctions are in addition to the Association's remedies under Section 4.3(c) of the Declaration relating to maintenance. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guests or tenants. Any such suspension of rights may be for the duration of the infraction and or any additional period thereafter, such additional period not to exceed thirty (30) days per violation.

**Section 4.4 Insurance.** The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association may, but need not, maintain in force adequate officers and directors' insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Developer, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association may maintain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the Real Estate, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

**Section 4.5 Owners' Insurance Requirements.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon. The Board may require all Owners to furnish copies or certificates thereof to the Association. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX of this Declaration and all applicable zoning, building and other governmental regulations. The Owner shall pay any costs of repair or reconstruction, which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat, safe, and attractive condition.

**Section 4.6 Condemnation or Destruction.** In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Pro-rata Shares (as hereinafter defined), whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

**Section 4.7 Transfer of Control of Association.** Developer shall transfer control of the Association to the Members as soon as is practical upon the termination of the Class B Membership, as described in Section 4.2 above.

**Section 4.8 Interim Advisory Committee.** Developer may, in its sole discretion, establish and maintain until such time as Developer shall transfer control of the Association pursuant to Section 4.7 hereof, an Interim Advisory Committee (the "Advisory Committee"). If established: (a) The Advisory Committee shall serve as a liaison between the Owners (other than the Developer) and the Association, and advise the Association from time to time during such period; (b) The Advisory Committee shall consist of three (3) members, each of whom must be an Owner (other than Developer, or an officer, director or employee of Developer); (c) The members of the Advisory Committee shall serve without compensation. The Advisory Committee shall be elected for a term of one (1) year by the Developer at a meeting thereof called for such purpose; and (d) The Developer may remove any member of the Advisory Committee with or without cause, and elect a successor at a meeting thereof called for such purpose.

**Section 4.9 Mortgagees' Rights.** Any mortgagees of any Owners shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

**Section 4.10 Developer Audit Right.** Following the termination of the Class B membership and so long as Developer owns any Lot, Developer shall have the right to audit the books and records of the Association.

**Section 4.11 Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

## **ARTICLE V** **ASSESSMENTS**

**Section 5.1 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Real Estate and promoting the

health, safety, and welfare of the Owners, users, and occupants of the Real Estate and, in particular, for the Association's obligations relating to the improvement, repairing, operating, and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner (except the Developer and Builders) hereby covenants and agrees to pay to the Association:

(a) A Pro-rata Share (as hereinafter defined) of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided.

(b) A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

Lots owned by Builders shall be assessed one-fourth (1/4) of the annual Assessment during the Development Period. This is reasonable and equitable under the circumstances, as Lot(s) owned by Builders are likely to be vacant, and as such would not generate the same maintenance burden as occupied lots. No Owner other than Builders shall be entitled to a reduced rate of dues, regardless of whether the Lot owned by that Owner is vacant or not.

Lots owned by the Developer or its assigns shall not be assessed; however, Developer or its assigns shall be responsible for any shortfall in HOA revenues.

**Section 5.2 Liability for Assessment.** Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot other than Lots owned by the Developer and shall constitute a lien from and after the due date thereof in favor of the Association upon each such Lot. The lien for Assessments shall be subordinate to the lien of any first mortgage on a Lot. An Owner's failure to pay any Assessment shall not, by the terms of this Declaration, constitute a default under a federally insured mortgage on such Lot. Mortgagees shall not be required to collect any Assessment. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each such Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

**Section 5.3 Pro-rata Share.** The Pro-rata Share of each Owner for purposes of this Article V shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Real Estate ("Pro-rata Share").

**Section 5.4 Basis of Annual Assessments.** The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association. Such budget shall serve as the basis for establishing the annual assessments.

**Section 5.5 Capital Contributions.** Every Owner other than Developer and Builder shall be responsible for an initial capital contribution in an amount to be determined by Developer. Such capital contribution shall be due upon transfer of the title to any portion of the Property to a new owner other than Developer or a Builder.

**Section 5.6 Basis of Special Assessments.** Should the Board at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

**Section 5.7 Fiscal Year; Date of Commencement of Assessments; Due Dates.** The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The liability of an Owner, other than Developer, for Assessments under this Article V shall commence as of the date such Owner acquires his interest in a Lot. The first annual Assessment shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

**Section 5.8 Duties of the Association Regarding Assessments.**

(a) The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(b) The Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association may assess an administrative fee for such certificate, not to exceed the sum of \$25.00 or the maximum amount permitted by North Carolina law.

(c) The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

**Section 5.9 Non-payment of Assessments; Remedies of Association.**

(a) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of

such Owner in such Lot, and shall be collected in the same manner as the Assessments described in subparagraph (b) hereof; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest at the rate of eighteen percent (18%) per annum or the maximum amount permitted by North Carolina law until paid in full. In addition to such interest, the Association shall assess a late fee, as from time to time determined by the Board of Directors of the Association. The Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorney's fees, and in the event a judgment is obtained, such judgment shall include such interest, late fees, costs, and attorneys' fees.

**Section 5.10 Adjustments.** In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association.

**Section 5.11 Budget Deficits during Developer Control Period.** Developer shall advance funds to the Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive of any allocation for capital and other reserves) and the annual and special and specific assessments for such fiscal year.

**Section 5.12 Failure to Assess.** The failure of the Board to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

## **ARTICLE VI** **ARCHITECTURAL STANDARDS AND REQUIREMENTS**

**Section 6.1 Purpose.** In order to preserve the natural setting and beauty of the Real Estate, to establish and preserve a harmonious and aesthetically pleasing design for the Real Estate, and to protect and promote the value of the Real Estate, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article VI and in Article VII. Notwithstanding the foregoing, neither this Article nor Article VII shall apply to the activities of the Developer or Builder during the Development Period, nor to construction or improvements or modifications to the Common Areas by or on behalf of the Association. The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Committee.

**Section 6.2 Architectural Control Committee.** The Board may establish an Architectural Control Committee to consist of three (3) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. Members of the Committee may include persons who are not Members of the Association. Members of the Committee may or may not be members of the Board. During the Development Period, the Developer shall have all of the powers and authority of the Committee.



The regular term of office for each member of the Committee shall be one year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its functions set forth herein. Such costs associated with the use of consultants shall be considered a Common Expense, unless the Committee determines that such costs are the responsibility of the applying Owner.

The Committee shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures containing Lots and the open space, if any, appurtenant thereto. Plans and specifications showing the nature, kind, shape, color, sizes, materials, and location of such modifications, additions, or alterations shall be submitted to the Committee for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surroundings, topography, and finished grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Dwelling Unit, or to paint the interior of his Dwelling Unit any color desired. The Committee shall endeavor to approve or to disapprove such plans or to request additional information within thirty (30) days after submission of completed plans, proposals, specifications or drawings.

**Section 6.3 No Waiver of Future Approvals.** The approval by the Committee of any proposals or plans and specification or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

**Section 6.4 Architectural Approval.** To preserve the architectural and aesthetic appearance of the Real Estate, no construction of improvements of any nature whatsoever with the exception of vegetative landscaping shall be commenced or maintained by an Owner, other than the Developer, with respect to the construction or affecting the exterior appearance of any Dwelling Unit or with respect to any other portion of the Real Estate, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, tree houses, playground equipment, or similar structures, awnings, walls, fences, exterior lights, garages, or outbuildings, nor shall any exterior addition to or change or alteration therein be made (excluding repainting in the original color but otherwise including, without limitation, painting or staining of any exterior surface), unless and until a copy of the plans and specifications and related data (including, if required by the Committee, a survey) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Committee, as to the compliance of such plans and specifications with such standards as may be published by the Committee from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Committee, and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved".

(a) *Power of Disapproval.* The Committee may refuse to grant permission to construct, place or make the requested improvement, when: (i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of the restrictions contained in this Declaration; (ii) The design, proposed material or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof and brick colors, or with the Real Estate in general; (iii) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners; and/or (iv) The Committee is otherwise authorized to disapprove the requested improvement in this Declaration.

(b) *Powers Following Approval.* Following approval of any plans and specifications by the Committee, representatives of the Committee shall have the right during reasonable hours to enter upon and inspect any Lot, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefore have been approved and are being complied with. In the event the Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications.

**Section 6.5 Non-Vegetative Landscaping Approval.** To preserve the aesthetic appearance of the Real Estate, no material modification to the grading, excavation, or filling of any Lot shall be implemented by an Owner, unless and until the plans therefore have been submitted to and approved in writing by the Committee. The provisions hereof regarding time for approval of plans, right to inspect, right to enjoin and /or require removal, etc. shall also be applicable to approvals required under this Section.

**Section 6.6 Approval Not a Guarantee.** Each Owner is strongly advised to consult with independent architects and engineers to ensure that all improvements or alterations made by such Owner are safe and in compliance with applicable governmental requirements. No approval of plans and specifications by the Committee and no publication of standards by the Developer, the Association or the Committee shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be built in a good and workmanlike manner. Neither the Developer, the Association, nor the Committee shall be responsible or liable for: (a) any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article VI; (b) loss or damages to any person arising out of the approval or disapproval of any plans or specifications; (c) any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations; nor (d) any defects in construction undertaken pursuant to such plans and specifications. The Owner constructing or altering any improvements shall indemnify, defend and hold the Association, the Committee and the Developer harmless from (i) any claims or damages of any nature arising from such improvements or alterations or any approval thereof by the Committee or Developer and (ii) any claim that the Association, the Committee, any member of the Committee or the Developer breached any duty to other Owners in issuing approval of such Owner's improvements or alterations.

**Section 6.7 Building Restrictions.** All improvements shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. Prior to any such grading, clearing, construction of impervious surface, building, or other construction activity, the Owner of any Lot which is subject to such rules, regulations, guidelines or restriction shall make such filings, and obtain such authorizations and permits as are required thereunder, and further, shall receive the prior written approval of the Committee.

## **ARTICLE VII**

### **USE RESTRICTIONS**

The Association, acting through its Board, shall have the authority to make and to enforce standards and restrictions governing the use of the Real Estate, in addition to those contained herein, and to impose reasonable user fees for use of Common Areas. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled or modified in a regular or special meeting of the Association by a majority of Members entitled to vote thereon subject to the prior written consent of the Developer during the Development Period.

**Section 7.1 Use of Lots.** Except as permitted by Sections 7.24 and 7.31 hereof, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried therein. The use of a

portion of a Dwelling Unit as an office by an Owner, or his tenant shall not be considered to be a violation of this covenant if Owner is in compliance with Section 7.24 below. No residence may be built containing less than 1,600 square of heated living area. No building or structure shall be located on any Lot outside of the setback lines designated on the Plats. After initial construction by a Builder, any Dwelling Unit that is subsequently reconstructed or repaired shall be of the same square footage and size as the original Dwelling Unit constructed by a Builder.

**Section 7.2 Awnings and Window Screens.** No foil or other reflective material shall be used on any windows for sunscreens, blinds, shades, or other purposes nor shall any window-mounted heating or air conditioning units be permitted. No metal, fiberglass or similar type awnings or patio covers shall be permitted. Permanent clotheslines will not be approved. Clothing, rugs, or other items which are visible to others in the Real Estate shall not be hung on any railing, fence, hedge, or wall.

**Section 7.3 Signs and Flags.** No signs of any kind shall be erected within the Real Estate, or permitted within any windows, without the written consent of the Board, except for such signs as may be required by legal proceedings and except for a single standard real estate "for sale" or "for rent" sign may exist on a Lot if such does not exceed six (6) square feet in area. Developer or Builder may use such signs as it deems necessary or appropriate during the Development Period. No business signs, flags (except as allowed under Section 7.20), banners or similar items except those placed and used by Developer advertising or providing directional information shall be erected by any Owner. If permission is granted to any Person to erect a sign, including name and address signs within the Real Estate, the Board reserves the right to determine the size and composition of such sign as it, in its sole discretion, deems appropriate.

However, nothing in this Declaration shall regulate or prohibit an Owner from displaying on the Owner's Lot the flag of the United States or North Carolina, so long as the said flag is no greater than four feet by six feet and is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. 5-10, as amended, governing the display and use of the flag of the United States. Further, nothing in this Declaration shall regulate or prohibit an owner from displaying on the Owner's Lot a political sign (as defined in N.C.G.S. 47F-121), provided said sign is displayed not more than 45 days before the day of the election or more than seven days after the day of the election.

#### **Section 7.4 Parking and Prohibited Vehicles.**

(a) *Parking.* Vehicles shall be parked in the garages or on the driveways serving the Lots. No motor vehicle, whether or not utilized by an Owner, shall be parked on any street or public right-of-way. Garages shall be used for parking of vehicles and no other use or modification thereof shall be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed.

Any vehicle not in operable condition and validly licensed may be kept on a Lot only if 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. No Owners or other occupants of any portion of the Real Estate shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(b) *Prohibited Vehicles.* Commercial vehicles primarily used or designed for commercial purposes, tractors, busses, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Real Estate except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Real Estate during

daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicles parked in violation of this Section or parking rules promulgated by the Board may be towed at the expense of the Owner. Further, "commercial vehicles" shall be defined herein as vehicles weighing more than 6,500 pounds and having more than two (2) axles.

(c) *Towing of Vehicles.* The Association shall have the right to have any vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of this Section towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association by the owner of the vehicle. If the vehicle towed is owned by an Owner, then the cost incurred by the Association in towing the vehicle or equipment shall be assessed against the Owner and his Lot and be payable on demand, and such cost shall be secured by a lien on the Owner's Lot the same as provided for assessments in Section 5.2.

**Section 7.5 Animals and Pets.** No animals (including bees and agricultural animals such as goats, pigs, sheep, donkeys, chickens, other fowl or livestock) shall be maintained or permitted upon a Lot or Lots. However, normal and usual household pets may be maintained (including dogs, cats and small animals) upon the premises, providing that they are not maintained for breeding or commercial purposes, and providing that they do not result in creating a public nuisance, unsanitary conditions or unusual levels of noise. The number of household pets generally considered to be outdoor pets (including 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. All pets shall remain under the control and supervision of an adult Owner and shall not be permitted off of such Owner's respective Lot unless on a leash or other restraint. The owner of any pet shall be responsible to clean up or repair any waste or damage caused by such pet and assure that such pet does not create any unreasonable disturbance. No dog pens or dog runs are permitted. A doghouse is permitted so long as it is located in the Rear Plane of the Lot and not visible from the street. Owners shall promptly "pooper scoop" or otherwise properly remove and dispose of all excrement created by their pets within the Real Estate.

The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that any animals be restricted to designated areas within the Common Area. The Board may adopt a rule prohibiting certain pets which is more restrictive than this Declaration, except that such rule shall not apply to animals already residing in the Real Estate 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 from the Real Estate.

**Section 7.6 Quiet Enjoyment.** No portion of the Real Estate shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition. No noxious or illegal activity shall be carried on upon any portion of the Real Estate. No hunting of any nature shall be permitted within the Real Estate. No outside burning of trash, garbage or household refuse shall be permitted within the Real Estate, except that burning of wood or leaves which are contained in a fire pit and utilized periodically. The Developer or the Association may order the relocation of any wood piles which are unsightly. No horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Real Estate.

**Section 7.7 Unsightly or Unkempt Conditions; Lawn Care; Dumping.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. All lawns and other landscaping materials shall be maintained on a regular basis. In no event shall the grass on any Lot exceed the length of six inches (6"). Trees which are dead and present a danger of falling onto adjacent property, common areas, sidewalks or the streets shall be removed. The pursuit of hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Real Estate. Nothing which would result in a cancellation of any insurance for any portion of the Real Estate, or

which would be in violation of any law or governmental code or regulation shall be permitted in the Real Estate. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Real Estate shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot are subject.

### **Section 7.8 Antennas, Aerials and Satellite Dishes.**

(a) *Intent.* It is the intent and desire of Developer that the Real Estate be developed in an aesthetically pleasant manner, and that the residences constructed on the Lots retain a harmonious and consistent appearance. To this end, it is the goal of the provisions of this Section 7.8 to limit the installation of any satellite dishes, antennas and aerials on the Lots so that such are not visible from the street in front of such Lot.

(b) *Permitted Installation and Standards.* A "Satellite Dish" or "Antenna," as such terms are defined below, shall be permitted to be installed by an Owner without the approval of the Developer or the Association provided the location of the Satellite Dish or Antenna, and all related cables and wiring, are installed at the least visible location on such Owner's Lot, as viewed from the street directly in front of such Lot, which will not result in a substantial degradation of reception. Within twenty (20) days from the installation of a Satellite Dish or Antenna, an Owner shall notify the Association of such installation. Such notice shall indicate the item installed, the approximate location on such Lot, and that such installation meets the standards contained in this subsection (b).

(c) *Rights of Association and Developer.* The Association and Developer shall have the right to enter upon a Lot on which a Satellite Dish or Antenna is installed in order to (i) confirm that the Satellite Dish or Antenna, as the case may be, was installed in accordance with the standard specified in Section 7.8(b), above; or (ii) install, at the expense of the Association or the Developer, as the case may be, landscaping, fencing, or a combination thereof, so as to shield or otherwise block the view of such Satellite Dish or Antenna from the street in front of such Lot. In the event the installation does not meet the standard specified in Section 7.8(b), above, the Association may require the relocation of the Satellite Dish or Antenna by the Owner, at the Owner's expense, to another location which meets such standard. In addition, the Association shall have the right to require the Owner, at the Owner's expense, to paint the Satellite Dish or Antenna (provided that such painting does not impair the reception thereof) to match the background of the installation area.

(d) *Definitions of Satellite Dish and Antenna.* For purposes of this Section 7.8, the terms "Satellite Dish" and "Antenna" shall mean any satellite dish or antenna that is subject to the Telecommunications Act of 1996, as amended, and any applicable regulations issued thereunder (collectively, the "Telecom Act").

(e) *Reception Devices not Governed by the Telecom Act.* Any antennas, aerials, satellite dishes, or other apparatus not subject to the Telecom Act shall be permitted on a Lot only if: (i) concealed by landscaping, fencing, or a combination thereof; (ii) installed so as not to be visible from the street in front of such Lot, front elevation street view; and (iii) not constitute a nuisance to any other Owner. All installations under this subsection (e) shall be first approved by the Association.

(f) *Miscellaneous.* No radio or television signals, nor electromagnetic radiation, shall be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Real Estate, provided however that the Developer and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus or master antenna or cable system for the benefit of all or a portion of the Real Estate, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

**Section 7.9 Garbage Cans.** No rubbish, trash or garbage containers shall be stored or maintained outdoors except those distributed by the entity that collects trash for the Real Estate. Such containers may not be placed at the curb sooner than 24 hours before the scheduled pickup, and they must be removed from the curb within 24 hours of the trash pick-up and stored behind the Dwelling Unit. Owners may store the containers on the side of the Dwelling Unit as long as the container is shielded from view from the street and/or adjoining lots by either natural shrubbery or a Partition designed to hide trash containers from view.

**Section 7.10 Pools.** Pools meeting all of the following requirements are permitted with approval of the Committee:

- (a) The pool must be in-ground and located in the Rear Plane of the Lot.
- (b) Positive drainage must be re-established upon completion of pool in order to provide proper storm water drainage to the Lot and surrounding Lots. The Owner must remedy any adverse effects on adjoining Lots or Common Area resulting from installation, use or operation of the Owner's pool, including water drainage issues.
- (c) Special care must be taken in septic communities so as not to interfere with septic drainage. A separate permit must be obtained, if required by local regulatory agencies.
- (d) The pool shall not be located within any swale or easement.
- (e) Any required county and/or city permits must be obtained by the Owner and a copy provided to the Association prior to start of construction.
- (f) County and/or city regulations must be followed.
- (g) County and/or city inspections must meet approval, and a certificate of use must be issued or permits successfully closed upon completion, if required by regulatory agencies.
- (h) Pool fencing must comply with governmental ordinances, regulations or other laws.

**Section 7.11 Storage Sheds and Temporary Structures.** Except as may be utilized by Developer or Builders during the Development Period, no tent, shack, trailer, storage shed, mini-barn or other similar detached structure shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Committee or the Developer and children's overnight camping tents will be allowed as long as they are not up longer than forty-eight (48) hours.

**Section 7.12 Drainage, Water Wells and Septic Systems.**

- (a) Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than the Developer may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.
- (b) No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot.

**Section 7.13 Traffic Regulation and Sight Distance at Intersections.** All Lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain wherein it would create a traffic or sight problem. All vehicular traffic on the private streets and roads in the Real Estate shall be subject to the provisions of

the laws of the State of North Carolina, and any other applicable governmental agency, concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Real Estate. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems necessary, including levying fines for the violation thereof. Only drivers licensed to operate motor vehicles by the State of North Carolina or by any other state in the United States may operate any type of motor vehicle within the Real Estate. All vehicles of any kind and nature which are operated on the streets in the Real Estate shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Real Estate.

**Section 7.14 Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Real Estate, except for temporary lines as required during construction and high voltage lines if required by law for safety purposes.

**Section 7.15 Air Conditioning Units.** Except as may be permitted by the Board, no window air conditioning units may be installed in any Lot.

**Section 7.16 Mailboxes.** Unless cluster mailboxes have been installed in the Real Estate (see Section 3.11), each Owner of a Lot shall maintain the mailbox and structure which was originally installed by a Builder, and shall replace the same as necessary with a mailbox and structure which is substantially the same in appearance as that which was originally provided to the Dwelling Unit. Nothing may be attached to the mailbox structure which will affect the uniformity thereof with other such structures in the Real Estate. The Committee shall have the discretion to require the replacement of any mailbox within the Real Estate at the expense of the Owner of the Lot served thereby. Mailboxes constructed of brick, stone or other similar masonry shall not be allowed.

**Section 7.17 Solar Panels.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot without prior written approval of the Committee. Solar panels visible by a person on the ground shall not be permitted:

- (a) On the façade of a structure that faces areas open to common or public access;
- (b) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or
- (c) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

**Section 7.18 Building Materials.** Building materials and supplies shall not be stored or erected on any Lot which has not received architectural approval for construction of a Dwelling Unit pursuant to the provisions of Article VI hereof and for which construction has commenced.

**Section 7.19 Drainage.** No Dwelling Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the subdivision, or any part thereof, or for any Lot as shown on the approved drainage or subdivision plans on file with the municipality or other governing body in which the Real Estate is located. In addition, no Owner or other person shall change the direction or flow of water in accordance with the approved drainage plans.

**Section 7.20 Exterior Flags, Sculpture and Decorations.** Exterior sculptures, fountains, flags and similar items must be approved by the Committee. Holiday decorative lighting shall be allowed from October 15 of a year until January 15 of the following year; provided, however, the Board may adopt rules and

regulations limiting the type, intensity and number of decorative lights so allowed. Other seasonable decorations are approved two weeks prior to the event until two weeks after the event.

**Section 7.21 Driveways and Sidewalks.** All driveways and sidewalks, if any, will be constructed of concrete by a builder of the Dwelling Unit which it serves. Owners shall maintain and replace the driveway of their Lot and the sidewalk located thereon, if any, so as to maintain the same appearance as provided at the time of original construction, ordinary wear and tear accepted.

**Section 7.22 Wetlands, Lakes and Water Bodies.** All wetlands, Lakes, ponds, and streams within the Real Estate, if any, shall be aesthetic amenities only, and no other use thereof, including without limitation, fishing, swimming, boating, playing or use of personal flotation devices, shall be permitted except as provided in Section 7.30. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of Lakes, ponds or streams within the Real Estate.

**Section 7.23 Fences.** No fencing shall be installed on any Lot without the prior review and written approval of the Committee. The Committee shall have approval on all aspects of any proposed fencing including but not limited to size, location, shape, height, and building material. The Committee shall publish written Rules and Guidelines in regards to the specific dimensions, materials and location of any proposed fencing.

- (a) General Guidelines: A Fence Application shall be completed for written approval in accordance with the Rules and Regulations established by the Committee prior to the construction of any fence.

**Use of Professional Installer.** A professional fencing contractor must be hired by the Owner, at such Owner's cost, to install approved fencing for such Owner.

**Developer Installed Fencing.** No fencing shall connect to or otherwise interfere with any fencing originally installed by the Developer. Any fencing installed by Developer shall not be subject to these standards.

**Landscape Easements.** Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, shall be erected or maintained in or upon Landscape Easements.

**Fencing within Easements:** Fencing which is installed within any easement affecting a Lot shall be subject to the risk of removal without notice by the Association or any other entity or entities which have access rights, if any work or repairs are to be done within the easement area(s). The Owner of such Lot shall be responsible for any and all costs relating to the removal of such fencing and for the subsequent replacement of any approved replacement fencing.

- (b) Additional Fencing Guidelines. Fencing for Lots in highly visible locations (such locations to be determined by the Committee in its sole discretion) may be subject to additional restrictions.

**NOTE:** *In addition to the above restrictions and standards, the applicable county or municipality may have restrictions and ordinances that may affect, limit or otherwise restrict or prohibit an improvement to a Lot, including fencing. Approval of any improvement by the Committee does not guarantee that such improvement is not subject to governmental approval. There may be instances where a change is approved through the Committee but may not be allowed through the municipality (or vice versa). An Owner must check with the municipality and obtain any permits or approvals that may be required.*



**Section 7.24 Business Uses.** No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit 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 Unit; (b) the business activity conforms to all zoning requirements for the Real Estate; (c) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate or door-to-door solicitation of residents of the Real Estate; and (d) the business activity is consistent with the residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, 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 involve 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: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this section. This section shall not apply to any commercial property within the Real Estate nor shall it apply to any activity conducted by the Developer or a builder approved by the Developer with respect to its development and sale of the Real Estate or its use of any Lots or Dwelling Units which it owns within the Real Estate.

**Section 7.25. Basketball Goals.** Portable basketball goals are only permitted if located in the rear plane of a lot and not visible from the street. Portable basketball goals should be installed and maintained in strict accordance with the manufacturer's instructions with the weighting material for the goal being placed within the base itself. In no event shall any material or weight of any sort be placed on top of or around the base of the goal.

Permanent basketball goals will be permitted in the front place of the lot and require prior architectural approval. The goal must be at least 15 feet and perpendicular from the curb. The post must not be placed within the 5-foot side setback.

The base, goal post, backboard and net for both permanent and portable basketball goals must always be kept in good repair. The Association's Board of Directors is expressly authorized to determine, in the Board's sole discretion, that an Owner's goal is in need of maintenance or repair (e.g., repainting, net replacement, rust removal, etc.) and may, in the Board's discretion, require that such maintenance and/or repair be carried out by the Owner of the Lot upon which the goal is situated, kept or installed. It shall be a violation of this section 7.25 for any Owner to fail to comply with any such requirement(s) of the Board within ten (10) days after the Owner's receipt of written notice of the same.

The use of basketball goals is restricted to daylight hours.

**Section 7.26 Playground Equipment.** All playground equipment and playsets shall be located in the Rear Plane of a Lot and at least ten (10) feet from all property lines and sidewalks. Metal playsets are prohibited. All playsets or playground equipment shall be maintained in good repair by the Owner.

**Section 7.27 On-Site Fuel Storage.** No on-site storage of gasoline or other fuels shall be permitted on any part of the Real Estate, except that (a) up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, (b) the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment, and (c) standard-sized tanks for the storage of propane or other heating fuels for residential use shall be permitted. All such fuel storage tanks allowed pursuant to section (c) above shall be buried in the ground or screened from view so as not to be noticeable or apparent from the abutting street(s) or Lots immediately adjacent thereto. All such fuel storage tanks shall be installed and maintained in accordance with all applicable

regulations. Any above ground tanks must be located in the Rear Plane of the Lot or on the side of the Dwelling Unit at least fifteen (15) feet behind the front corner of the Dwelling Unit and screened from view.

**Section 7.28 Contiguous Lots.** Whenever two or more contiguous Lots shall be owned by the same Owner, such Owner shall not be permitted to use two or more of said Lots as a site for a single dwelling. Each Lot shall be, and shall remain, improved with a single Dwelling Unit, and each Lot shall be subject to the Assessments.

**Section 7.29 Control and Common Areas.**

(a) *Control by the Association.* As part of its general duties, the Association shall regulate the Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Common Areas. No improvements, excavation, changes in grade or other work shall be done upon the Common Areas by any Owner, nor shall the lakes or streams, if any, or Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Committee.

(b) *Restrictions of Use of Common Areas.* The following covenants and restrictions on the use and enjoyment of the Lots and the Common Areas shall be in addition to any other covenants or restrictions contained herein or in the Plats and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any of such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (i) No one other than Owners who are Members in good standing with the Association, or such an Owner's occupant, tenants, guests or invitees, may use the Common Areas.
- (ii) No nuisance shall be permitted to exist on any Lot and no waste shall be committed on any Lot which shall or might damage or cause injury to the Common Areas.
- (iii) All Owners and members of their families, their guests, or invitees, and all occupants of any Lot or the Properties or other persons entitled to use the same and to use and enjoy the Common Areas, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas.
- (iv) No Owner shall be allowed to plant trees, landscape or do any gardening in any part of the Common Areas, except with express permission from the Committee.
- (v) The Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended and shall be used subject to the rules and regulations from time to time adopted by the Board.

**Section 7.30 Laws and Ordinances.** Every Owner and occupant of any Lot or Dwelling Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Real Estate and any violation thereof may be considered a violation of this

Declaration; provided, however, the Board shall have no obligation to take action enforce such laws, statutes, ordinances and rules.

**Section 7.31 Sales and Construction.** Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Builders and the Developer and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and Dwelling Units or the developing of Lots, Dwelling Units and Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model houses, all as may be approved by the Developer from time to time, provided that the location of any construction trailer of any assignees of the Developer's rights under this Section 7.31 shall be subject to the Developer's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwelling Units as model residences, and to use any Dwelling Unit as an office for the sale of Lots and Dwelling Units and for related activities.

**Section 7.32 Occupants Bound.** All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

**Section 7.33 Roof Pitch.** The roof pitch on the main Dwelling Unit shall be a minimum of 5/12 or greater.

**Section 7.34 Garages and Driveways.** The interior of all garages situated on any Lot shall be maintained in a neat and clean condition. Garages shall be used only for the parking of vehicles and the storage of normal household supplies and materials and shall not be used for or converted to living quarters or for recreational activities or the initial construction thereof altered without the prior written approval of the Committee. Garage doors shall be left open only as needed for ingress and egress.

**Section 7.35 Doors.** All storm doors and screen doors of a Dwelling Unit shall be full-view glass or glass/screen and must match the existing façade color scheme. Door hardware shall also match the existing hardware (brass handle for brass lights, etc.). The Board may adopt rules and regulations to further regulate storm and screen doors.

**Section 7.36 Buffer Yard.** Any portion of a buffer area that is located within the boundaries of a Lot shall be maintained by the Owner.

**Section 7.37 Public/Private Storm Drainage Easements.** Each owner of a Lot shall maintain any and all pipe systems and open channels within the public storm drainage easements or private drainage easements located upon such Owner's Lot.

**Section 7.38 Impermeable Surface.** Prior to beginning any land disturbing activity or erecting any structure upon a Lot, an Owner, must contact the County Zoning Department to ensure that such activity will comply with the ordinance which governs impermeable surfaces.

**Section 7.39 Leases of Units.** Leasing of a unit by an Owner who has not regularly occupied the Unit as the Owner's primary residence for at least one (1) year is prohibited. No more than twenty percent (20%) of the Units may be occupied under Residential Leasing. Any and all leasing restrictions shall not apply to the Developer, Developer Affiliate, Builder, Builder Affiliate, or assigns. No Unit may be leased

for a period shorter than one (1) year. Any lease of a Unit shall be in writing and shall provide, among other things: (a) that the terms of the lease shall be subject in all respects to the Covenants, Conditions and Restrictions; (b) that any failure by the lessee to comply with all of the terms of such Covenants, Conditions and Restrictions shall constitute a default under the lease. In addition, promptly following the execution of any lease for a Unit, the owner of such Unit shall forward a copy of the lease to the Board of Directors of the Association.

## **ARTICLE VIII**

### **RULEMAKING AND REMEDIES FOR ENFORCEMENT**

**Section 8.1 Rules and Regulations.** Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots and Dwelling Units, and the amendments thereto shall be furnished by the Association to all Members prior to the effective date upon the Owners, their families, tenants guests, invitees, servants and agents, until and unless any such rule or regulations be specifically overruled, cancelled, or modified by the Board or in a regular or special meeting of the Association by a majority of the Members as set forth in the By-Laws, subject to Developer's consent during the Development Period.

#### **Section 8.2 Authority and Enforcement.**

(a) Upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Association shall have the power, after fifteen (15) days written notice to the Owner or the occupant of said violation, and failure by said Owner or occupant to cure the violation: (i) to cause the Association to correct the violation at its own cost and expense, which said cost and expense shall constitute a continuing lien upon the Lot of the Owner or the occupant who is guilty of such violation; (ii) to suspend an Owner's right to vote in the Association; and (iii) to suspend an Owner or occupant's right (and the right of his or her family, guests, and tenants) to use any of the Common Areas.

The Board shall have the power to impose all or any combination of these sanctions. Such sanctions are in addition to the Association's remedies under Section 4.2, above, relating to maintenance. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guests, or tenants. Any such suspension of rights may be for the duration of the infraction and or any additional period thereafter, such additional period not to exceed thirty (30) days per violation.

(b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the covenants and restrictions contained in this Declaration and the provisions contained in the Articles of Incorporation and By-Laws of the Association, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by the Developer, the Association, or any Owner against any person violating or threatening to violate any such covenant, restriction, rule, or regulation. Available relief in any such action shall include the recovery of damages; injunctive relief, either to restrain the violation or threatened violation or to compel compliance with the covenants, restrictions, rules or regulations; declaratory relief; the enforcement of any lien created by these covenants, restrictions, rules, or regulations; and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules, or regulations. Failure by the Developer, the Association, or any Owner to enforce any covenant, restriction, rule, or regulation shall in no event be deemed a waiver of the right to do so thereafter; provided, however, that no action shall be brought against either the Developer or the Association for failing to enforce or carry out any such covenants, restrictions, rules, or regulations.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

**Section 9.1 Term.** The covenants and restrictions of this Declaration shall run with and bind the Real Estate, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by more than seventy-five percent (75%) of the then Owners has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. The number of ten (10) year renewal periods shall be unlimited.

**Section 9.2 Amendment.** Prior to the conveyance of the first Lot to an Owner, the Developer may unilaterally amend this Declaration. After such conveyance, the Developer may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination, or to otherwise comply with any other governmental order or request; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots and the Dwellings; (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Department of Housing and Urban Development, to enable such lender or purchaser to acquire or purchase mortgage loans on the Lots and the Dwelling Units; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; (e) to annex additional real estate to the Real Estate as provided herein; (f) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, any amendment permitted under subsections (a) through (f) of this Section 9.2 shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, during the Development Period, the Developer may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of the Owner.

Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of voting Members representing at least sixty-seven percent (67%) of the Members entitled to vote thereon. Any amendment to be effective must be recorded in the public records of the County in which this Declaration was recorded.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of the Developer or the assignee of such right or privilege.

**Section 9.3 Indemnification.** The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member or former officer, director,

or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 9.4 Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Developer or the Board will best affect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes, which are less restrictive. The effective date of this Declaration shall be the date of its filing in the public records. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of North Carolina.

**Section 9.5 Right of Entry.** The Association, and during the Development Period the Developer, shall have the right, but not the obligation, to enter onto any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Association rules, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant directly affected thereby. This right of entry shall include the right of the Association to enter a Lot and Dwelling Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

**Section 9.6 Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration would be unlawful, void, or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by North Carolina law.

**Section 9.7 Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote representing at least two-thirds (2/3) of the Members entitled to vote thereon. However, this Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) actions brought for collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. .

**Section 9.8 Intentionally omitted.**

**Section 9.9 Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**Section 9.10 Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

**Section 9.11 Rights of Third Parties.** This Declaration shall be recorded for the benefit of the Developer, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Community, except as

provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of the Developer and the Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

**Section 9.12 Assignment.** Developer shall have the right to assign its rights and obligations under this Declaration to any third party.

IN WITNESS WHEREOF, the Developer has caused this Declaration of Covenants, Conditions and Restrictions for Benson Village to be executed as of the date written above.

DEVELOPER:

ABJ Investments LLC

By: [Signature]

Name: D. Brian Raynor

Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF Harnett

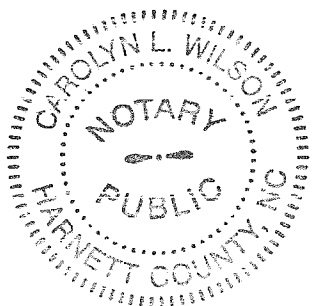
I certify that the following person(s), personally known to me, personally appeared before me this day and acknowledged to me that they voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: D. Brian Raynor, Manager

Date: 1/8/2024

[Signature]  
Notary Public: Carolyn L. Wilson

(Official Seal)

My commission expires: 3-26-2027





IN WITNESS WHEREOF, the Builder has caused this Declaration of Covenants, Conditions and Restrictions for Benson Village to be executed as of the date written above.

Builder:

True Homes, LLC

By: [Signature]

Name: D. Hope Bergamini

Title: Land Development Coordinator

STATE OF NORTH CAROLINA

COUNTY OF Union

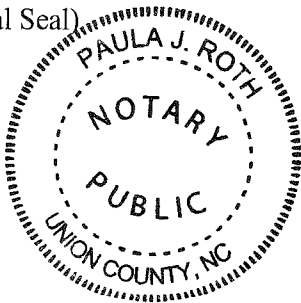
I certify that the following person(s), personally known to me, personally appeared before me this day and acknowledged to me that they voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: D. Hope Bergamini, Land Development Coordinator

Date: 1/12/24

[Signature]  
Notary Public: Paula J. Roth

(Official Seal)

My commission expires: 11-6-2027



**EXHIBIT A**

## Legal Description

**Tract 1**

BEING all of Tract No. 3 composed of **25.38 acres** in the division of the Anna McLamb Estate in Johnston County File No. 73 SP 78 as allotted by that Report of Commissioners to Martha Hall dated April 29, 1974, recorded in **Book 771, Page 538**, Johnston County Registry and as shown on that division map recorded in **Map Book 16, Page 129** Johnston County Registry which said tract is more particularly described as follows:

BEGINNING at a lightwood stake, said stake being the southwest corner of the original Anna McLamb Estate and in line of Mildred D. Langdon and runs thence as the line of Mildred D. Langdon North 04 degrees 24 minutes 55 seconds East 873.57 feet to a stake, a corner with Tract No. 2 according to a map of the division of the Anna McLamb Estate prepared by Blackmon and Jones, Registered Surveyor, dated December 1973; thence as the dividing line between Tracts 2 and 3 of said Anna McLamb Division South 83 degrees 10 minutes East 1255.76 feet to a stake in line of C.N. Bostic; thence as the line of C.N. Bostic South 04 degrees 00 minutes 20 seconds West 884.60 feet to a stake being the southeast corner of the original Anna McLamb Tract; thence as the line of C.N. Bostic North 82 degrees 40 minutes 45 seconds West 1262.59 feet to the point of BEGINNING containing **25.38 acres**, more or less, and is the same as Tract No. 3 in the division of Anna McLamb Estate according to a map of said division prepared by Blackmon and Jones, Registered Surveyor, P.A. dated December 1973.

TOGETHER with that 60 foot wide access easement which extends through Tracts Nos 1 and 2 to the above described Tract 3 as shown on Map Book 16, Page 129, Johnston County Registry. Being the same property as described in Book 5290, Page 865, Johnston County Registry.

**Tract 2**

BEGINNING at a stake in line of Robert A. Tart, said stake being a corner with Tract No. One, according to a map of the division of the Anna McLamb lands prepared by Blackmon and Jones, Registered Surveyors, dated December 1973, and runs thence as the line of Robert A. Tart and continuing as the line of J. Hiram Rose, South 04 degrees 24 minutes 55 seconds West 208.21 feet to a stake, corner with C.N. Bostic and runs thence as the line of C.N. Bostic South 04 degrees 00 minutes 20 seconds West 466.00 feet to a stake, a corner with Tract No. 3 of said division of Anna McLamb Estate; thence as the dividing line between Tracts 2 and 3 of the Anna McLamb Estate division, North 83 degrees 10 minutes West 1255.76 feet to a stake in the line of Mildred D. Langdon tract; thence as the line of Mildred D. Langdon and continuing as the line of Etta C. Britt, North 04 degrees 24 minutes 55 seconds East 674.15 feet to a stake in the line of Etta C. Britt and corner with Tract One of the Anna McLamb Estate division; thence as the dividing line between Tracts 1 and 2 South 83 degrees 10 minutes East 1252.42 feet to the point of BEGINNING, containing **19.38 acres** more or less, including easement and is the same as Tract No. Two in the division of Anna McLamb Estate according to a map of said division prepared by Blackmon and Jones R.S. P.A., dated December 1973.

The above referenced tract of land is the same land as Share No. Two in Report of Commissioners recorded in Book 771, Page 538, Johnston County Registry. See also deed recorded in Book 4486, Page 330, Johnston County Registry.

For further reference see map recorded in Map Book 16, Page 129, Johnston County Registry.

This conveyance is made subject to that 60 foot access easement for the use of Tracts 1 and 3 of said above referenced division and is described as follows:

BEGINNING at a point in the dividing line between Tracts 1 and 2 in the division of the Anna McLamb Estate lands according to a map of said division prepared by Blackmon and Jones, R.S., P.A., dated December 1973 said point being located North 83 degrees 10 minutes West 572.30 feet from the northeast corner of Tract No. 2 in the line of Robert A. Tart and runs thence South 02 degrees 30 minutes West 675.39 feet to a point in the dividing line between Tracts 2 and 3 of said division; thence as the dividing line of Tracts 2 and 3 North 83 degrees 10 minutes West 60.17 feet; thence North 02 degrees 30 minutes East 675.39 feet to a point in dividing line between Tracts 1 and 2 of said division; thence South 83 degrees 10 minutes East 60.17 feet to the point of BEGINNING and is a 60 foot access easement as shown on map of the Anna McLamb division prepared by Blackmon and Jones, Registered Surveyor, P.A. dated December 1973.