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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES AND
LIENS FOR CAELIN FARMS**

**THIS DOCUMENT REGULATES
THE DISPLAY OF POLITICAL SIGNS.**

After recording, ~~MAIL~~ TO:

Caelin Farms LLC.
246 Valleyfield Lane
Southern Pines, NC 28387

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES AND
LIENS FOR CAELIN FARMS

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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES AND
LIENS FOR CAELIN FARMS**

THIS DECLARATION is made on the date hereinafter set forth by **CAELIN FARMS LLC** (hereinafter "Declarant").

RECITALS:

A. Declarant is the owner of approximately 68.83 acres of land located in the Town of Spring Lake, Cumberland County, North Carolina, which Declarant is developing into a residential community known as Caelin Farms (the "Community"), which will contain approximately 118 single-family homes.

B. Declarant desires to provide for the maintenance and upkeep of the Common Area (hereinafter defined), and to provide for enforcement of covenants and restrictions applicable to the Community, and, to that end, desires to subject the property within the Community to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of such property and each Owner thereof; and

C. Declarant has incorporated under North Carolina law as a nonprofit corporation, the Caelin Farms Homeowners Association, Inc., to own, maintain and administer the Common Area, to administer and enforce covenants and restrictions exclusively applicable to the Community, and to collect and disburse the assessments and charges hereinafter created.

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

**ARTICLE I
DEFINITIONS**

Any defined term used in this Declaration shall have the meaning set forth below or, if not specifically defined in this Article I, the meaning of such term as set forth in the Act or in any other provision of this Declaration.

Section 1. "Act" shall mean and refer to as the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or in any successor portion of the North Carolina General Statutes), as the same exists from time to time. Words and terms used in this Article that are defined in the Act but not defined in the Code (for example, the

term “special declarant rights” [N.C.G.S. §47F-1-103(28)] shall have the definition contained in the Act.

Section 2. “Annexation Declaration” shall mean and refer to a document, by whatever name denominated, that is recorded for the purposes of annexing Annexed Property to this Declaration and causing such Annexed Property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration.

Section 3. “Annexed Property” shall mean and refer to all real property annexed or subjected (those two terms being used interchangeably herein) to all or any part of the terms of this Declaration after the initial recording of this Declaration in the Registry.

Section 4. “Association” shall mean and refer to the **CAELIN FARMS HOMEOWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns.

Section 5. “Board of Directors” and “Board” shall mean and refer to the board of directors of the Association and is the “executive board” as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this Declaration and in the Act.

Section 6. “Builder” shall mean and refer to a Person, other than the Declarant, who is regularly in the business of constructing Dwellings for sale to other Persons, and who purchases one or more Lots within the Properties for constructing a Dwelling on each such Lot for sale to a third-party.

Section 7. “Bylaws” shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 8. “Code” shall mean and refer to the Town of Spring Lake, North Carolina, Zoning and Subdivision Ordinance, as it exists from time to time, and includes all duly adopted amendments, restatements and supplements thereof, and all duly adopted regulations, rules, directives and policies of the Town pursuant to or in furtherance of the Code.

Section 9. “Common Area” shall mean and refer to the real property, together with any improvements thereon, owned (in fee or by easement or other right of use) or leased by the Association and intended for the common use and benefit of the Owners and occupants of the Properties, however such real property is described on a map or document recorded in the Registry. Common Area may be owned or leased by the Association or it may be owned by another Person with the Association having a right or easement therein (for example, part or all of a private storm water drainage easement located on either a Lot or real property that is not part of the Properties and that serves more than one Lot in the Properties or a right of the Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the Town).

Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility or a Sub-Association as set forth herein.

Common Area, if any, established by the Declarant or the Association for the benefit of fewer than all of the Owners and occupants of the Properties is "Limited Common Area". All references herein or in any recorded plat of the Properties to Common Area that is, in fact, Limited Common Area, are deemed corrected accordingly.

"Common Area" shall *not* include Sub-Association Common Area (defined below).

"Common Property" shall mean and refer to Common Area and all personal property owned or leased by the Association for the common use and benefit of the Owners and occupants of the Properties.

Section 10. "Common Area Easement" shall mean and refer to Common Area as to which the Association has only an easement interest, and not a fee simple interest.

Section 11. "Common Expense" shall mean and refer to all of the expenses incurred by the Association in furtherance of its rights and responsibilities under the Act, the Code, and the Governing Documents and including specifically, but without limitation, all of the following: ("Common Expense" shall not include any expenses of a Sub-Association.):

- (a) Expenses of the Common Property and administration, inspection and maintenance of the Common Property;
- (b) Expenses classified as Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;
- (c) Expenses for acquisition, maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members;
- (d) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;
- (e) Ad valorem taxes and public assessments and charges lawfully levied against Common Property owned in fee simple by the Association;
- (f) Fees or charges for utilities used in connection with the Common Area;
- (g) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;
- (h) Allocations to reserve funds;
- (i) Fees for professional and other services engaged by the Association;
- (j) Costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the Town or other Governmental Entity;
- (k) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;
- (l) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses; and
- (m) Expenses agreed by the Members to be Common Expenses of the Association.

Section 12. “Declarant” shall mean and refer to Caelin Farms LLC. It shall also mean and refer to any person, firm or corporation to whom or which Declarant may assign or delegate the rights and obligations of Declarant by an assignment of Declarant’s rights recorded in the Registry.

Section 13. “Declarant Control Period” shall mean and refer to the period of Declarant control of the Association, as provided in §47F-3-103(d) of the Act, and including, without limitation, time period in which Declarant has sufficient voting power to elect members of the Board). The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2035;
- (b) Not later than three (3) months after the date on which the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member (at the ratios provided in Sections 2(a) and 2(b) of Article III hereof); *provided, however*, that Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus giving Declarant, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, a sufficient number of votes (at the ratio provided in Section 2(a) and 2(b) of Article III hereof) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of the Declarant Control Period shall occur automatically as often as the foregoing shall occur); or
- (c) Relinquishment or transfer of all special declarant rights as provided in §47F-3-104 of the Act.

Section 14. “Declaration” shall mean and refer to this “Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Caelin Farms”, and all amendments thereto and supplements thereof.

Section 15. “Dwelling” or “Unit” shall mean and refer to any building or portion thereof within the Properties which is designated and intended for use and occupancy as a residence by a single family, whether by the Owner of such Dwelling or by tenants or lessees of such Owner.

Section 16. “Fiscal Year” shall mean and refer to the calendar year, unless and until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.

Section 17. “Governing Documents” shall mean and refer to all of the following: this Declaration, the Articles of Incorporation and Bylaws of the Association, architectural guidelines and bulletins, rules and regulations of the Association, Annexation Declarations, and any other declarations of restrictive or protective covenants applicable to the Properties, as the same may be amended, restated or supplemented from time to time.

Section 18. “Governmental Entity” shall mean and refer to the Town, the County of Harnett, the State of North Carolina, the United States of America, and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, and all applicable departments and agencies of any of them.

Section 19. “Lot” shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of any portion of the Community (regardless of whether the Lot has been subjected to this Declaration as provided in Article II hereof), with the exception of any Common Area and Open Space owned in fee by the Association, Common Area and Open Space owned in fee by a Sub-Association, and publicly-dedicated street rights-of-way, and greenway, park lands and Open Space owned in fee simple by the Town. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 20. “Member” shall mean and refer to every Person who or which holds membership in the Association.

Section 21. “Open Space” shall mean and refer to any and all open space areas shown on preliminary subdivision plans filed with the Town and delineated as such on any recorded map of the Properties, and any open space areas required by the Code or by the conditional use zoning of the Properties for the perpetual benefit of the Owners. Open Space areas required under the Code are required as compensation for the flexible lot dimensions allowed on part or all of the Properties, and Open Space areas in Conditional Use Zoning Districts may be required as consideration for such conditional use zoning. Accordingly, Open Space may not be conveyed except in strict compliance with the Code.

Section 22. “Operating Deficit” shall mean and refer to the negative difference (if any) between the total amount of the annual assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot but which are not paid, (ii) special assessments, and (iii) individual special assessments.

Section 23. “Owner” shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any Lot, including contract sellers and owners of an equity of redemption, but excluding any Person having an interest in a Lot solely as a tenant or as security for the performance of an obligation.

Section 24. “Person” shall mean and refer to a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Entity (including the Town), and any other entity.

Section 25. “Properties” shall mean and refer to the “Existing Property” described in Article II of this Declaration and any Annexed Property subsequently subject to this Declaration pursuant to said Article II.

Section 26. “Registry” shall mean and refer to as the Office of the Register of Deeds (or any successor office under applicable law) for Cumberland County, North Carolina, in which deeds, plats, easements, mortgages, and deeds of trust for the Properties are recorded. All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry.

Section 27. “Stormwater Agreement” (which term includes any other agreement, maintenance manual or other document, by whatever name, relating to Stormwater Control Measures) shall mean and refer to any agreement required by the Code between or among any combination of the Town, the Declarant, the Association (or Sub-Association), and one or more Owners, relating to maintenance of Stormwater Control Measures.

Section 28. “Stormwater Control Measures” and “Stormwater Control Structures” (the terms being used interchangeably) shall mean and refer to any one or more of the following that serves or benefits any part or all of the Properties or is required by the Code or other Legal Requirement in connection with any part or all of the Properties, whether located in the Properties or outside of the Properties: (i) storm water drainage easements (also referred to herein as “storm water easements” or “drainage easements”) that are shown on plats of the Properties recorded in the Registry or established by written instruments recorded in the Registry, and which either are located on the Common Property or benefit or serve more than one (1) Lot; and (ii) storm water management facilities for the Properties, including ponds, man-made or natural areas and/or planted or landscaped areas into which storm water drains, or in which storm water is collected or from which it is discharged, drains, pipes, conduits, inlets, channels, dams, ditches, filter, buffers, bio-retention areas, and other equipment, facilities and storm water management measures used for inspecting, monitoring, measuring, collecting, controlling, transporting, conveying, handling, storing, discharging and managing storm water. Except as otherwise provided herein, Stormwater Control Measures are part of the Common Property, Limited Common Property or Sub-Association Common Property, as applicable, and maintenance of Stormwater Control Measures is a Common Expense, Limited Common Expense, or Sub-Association Common Expense, as applicable. References in the Declaration to storm water management include all applicable Stormwater Control Measures and Stormwater Agreements.

Section 29. “Sub-Association” shall mean and refer to a North Carolina nonprofit corporation or other entity organized for the purpose of owning, managing and/or maintaining that Sub-Association’s Common Property (including, with regard to a condominium, its common elements) and including, without limitation, a property owners’ association in a portion of the Properties containing townhomes or condominiums. Assessments imposed upon the Members of the Association by the documents establishing or governing a Sub-Association or subjecting an applicable portion of the Properties thereto shall be in addition to, and not in lieu of, assessments imposed upon such Members by this Declaration.

Section 30. “Sub-Association Common Area” shall mean and refer to the real property owned (in fee or by easement or other right of use) or leased by a Sub-Association and intended for the common use and benefit of the Owners and occupants of Lots and Dwellings that are subject to the applicable Sub-Association Declaration, regardless of how such property is described on a map or document recorded in the Registry. Sub-Association Common Area may be owned or leased by a Sub-Association or it may be owned by another Person with the Sub- Association having a right or easement therein (for example, part or all of a private storm water drainage easement located on either a Lot or real property that is not part of the Properties and that serves more than one Lot in the Properties or a right of the Sub-Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the Town).

Sub-Association Common Area shall be maintained by a Sub-Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility, the Association, or another sub-association. All expenses of a Sub-Association ("Sub-Association Common Expenses") shall be collected by such Sub-Association from Owners of Lots and Dwellings that are subject to the applicable Sub-Association Declaration.

Sub-Association Common Area, if any, established by the Declarant or the Sub-Association for the benefit of fewer than all of the Owners and occupants of Lots and Dwellings that are subject to a Sub-Association Declaration is "Sub-Association Limited Common Area". All references herein or in any recorded plat of the Properties to Sub-Association Common Area that is, in fact, Sub-Association Limited Common Area, are deemed corrected accordingly.

"Sub-Association Common Property" shall mean and refer to Sub-Association Common Area and all personal property owned or leased by the Sub-Association for the common use and benefit of the Owners and occupants of the Lots and Dwellings that are subject to the applicable Sub-Association Declaration Properties.

Section 31. "Sub-Association Declaration" shall mean and refer to a declaration or Annexation Declaration recorded in the Registry and applicable solely to Owners, Lots and Sub-Association Common Property within the jurisdiction of a Sub-Association. During the Declarant Control Period, no Sub-Association Declaration shall be recorded without the prior written consent of Declarant, as evidenced by Declarant's execution of same.

Section 32. "Town" or "Town of Spring Lake" shall mean and refer to the Town of Spring Lake, North Carolina, a North Carolina municipal corporation.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF CAELIN FARMS

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

Section 2. Additions to Existing Property:

(a) By Declarant. At any time during the Declarant Control Period, additional lands may be annexed by the Declarant without the consent of the Members and, therefore, become subject to this Declaration by the recording by Declarant of an Annexation Declaration extending the operation and effect of this Declaration to the property to be annexed. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

(b) By the Members. After Declarant no longer owns any real property that is subject to this Declaration, additional real property may be annexed and made subject to this Declaration by the affirmative vote of not less than sixty-seven percent (67%) of the Members of

the Association. Such annexation shall be done by recording by the Association of an Annexation Declaration extending the operation and effect of this Declaration to the property to be annexed; provided, however, that such property must be contiguous to property already subjected to this Declaration (or separated from such property only by the right-of-way of a street or road) and further provided that, if required, such annexation must be approved by the Town. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

(c) Annexation Declaration. An Annexation Declaration need not be in any specific form and need not be titled Annexation Declaration (for example, the required subjecting language may be contained in a deed conveying the Annexed Property being annexed), but it shall indicate clearly the intention to subject or annex such Annexed Property. Each Annexation Declaration shall be effective to annex Annexed Property only upon obtaining all required approvals and upon its recording in the Registry, and shall be effective on the date of recording. Each Annexation Declaration shall describe the Annexed Property annexed and indicate that the Annexed Property is being subjected or annexed to the Declaration. An Annexation Declaration may contain such use restrictions and such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens applicable to such Annexed Property, not in conflict with this Declaration, as the Person annexing such Annexed Property to the Declaration may determine, but this Declaration shall control over any provision of any Annexation Declaration that conflicts or is inconsistent with this Declaration.

(d) Votes Allocated to Annexed Property. The votes of the Members in the Annexed Property shall be allocated in the same manner that votes are allocated in portions of the Properties already subject to the Declaration. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Section 3. Conveyance of Common Area in Annexed Property. Prior to the conveyance of the first Lot within any newly annexed property to an Owner other than Declarant, the owner of the annexed property shall convey to the Association all Common Area located within the newly annexed property. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

Section 4. Withdrawal of Properties from the Declaration.

(a) Withdrawal. Subject to Legal Requirements, at any time during the Declarant Control Period, the Declarant, in its sole discretion, without the approval or joinder of the Association, any Owner or any other Person except the Owner (if not Declarant) of the portion of the Properties being withdrawn, may record in the Registry a "withdrawal declaration" to withdraw one or more portions of the Properties from the Declaration. All portions of the Properties withdrawn from the Declaration shall be identified in the withdrawal declaration either by reference to a map recorded in the Registry or by a metes and bounds description. The withdrawal shall be effective on the date the withdrawal declaration is recorded in the Registry, or on such later date (if any) specified therein. All such withdrawals also must be approved by the Town, if required by Legal Requirements.

(b) Effect of Withdrawal. Any portion of the Properties that is withdrawn from the Declaration shall be released from the terms and provisions of the Declaration on the date the withdrawal becomes effective as provided herein and may thereafter be owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged and developed in any manner allowed under Legal Requirements, except that all easements specifically affecting such withdrawn portions of the Properties, as shown on plats or documents recorded in the Registry, shall remain effect unless released or terminated by all Persons having rights to exercise such easements.

Section 5. Sub-Association Declaration. Within the Properties there may be certain separate and distinct phases, sections, or subdivisions. Because such phases, sections or subdivisions may have varying Lot sizes, types of Dwellings, marketing considerations and other differences, it may be necessary or desirable to impose additional and different covenants and restrictions on such phases, sections or subdivisions which are applicable solely to such phase, section or subdivision. Accordingly, the Declarant or other Person who owns any such phase, section or subdivision of the Properties may subject such phase, section or subdivision to such Sub-Association Declaration as the Declarant or other Person, in its sole discretion, may from time to time determine, provided, however, that, during the Declarant Control Period, no Person other than the Declarant may subject any phase, section or subdivision of the Properties to any Sub-Association Declaration unless the Declarant consents in writing thereto by executing such Sub-Association Declaration. More than one phase, section or subdivision may be subjected to the same Sub-Association Declaration. Without limiting the generality of the foregoing, a Sub-Association Declaration may do any one or more of the following: (i) create and regulate the use of and assessments for Limited Common Area; (ii) provide for maintenance of Lots subject to such Sub-Association Declaration; and/or (iii) specify such use restrictions and may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not inconsistent with the Declaration, as the Person subjecting such real property to the Sub-Association Declaration may determine (provided, however, the provisions of the Declaration control over any conflicting provisions of any Sub-Association Declaration). Except for the foregoing matters that may be different in a Sub-Association Declaration from the requirements in the Declaration, the Declaration shall control over any provision of any Sub-Association Declaration that conflicts or is inconsistent with the Declaration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Declarant and every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include Persons who or which hold an interest merely as security for the performance of an obligation.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

There shall be three (3) classes of membership with respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Declarant or the Developer. When more than one Person owns an interest

(other than a leasehold or security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots".

(b) Class B Member. Declarant shall be the Class B Member. Declarant shall be entitled to nineteen (19) votes for each Lot that it owns. Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns, but such Declarant-owned Lots shall continue to be treated as Class B Lots for assessment purposes. Lots owned by the Declarant shall be "Class B Lots".

(c) Class C Member. Each Builder shall be a Class C Member and shall be entitled to one (1) vote for each Lot owned by it. Lots owned by a Class C Member shall be "Class C Lots".

Section 3. Declarant's Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint all directors and officers of the Association. Declarant's exercise of such right shall be announced either in the notice to the Members or announced at the beginning of such meeting.

Section 4. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his own personal living quarters, or if any Dwelling within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant and rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association. This Section applies only to Lots and Dwellings owned by Class A Members and specifically excludes Lots and Dwellings owned by the Declarant.

ARTICLE IV PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV and by rules and regulations adopted by the Members and/or the Board of Directors, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

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

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association, provided, however that the Association may not suspend an Owner's right to use of any Common Area providing access or utilities to his Lot.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association agree to such dedication, sale or transfer, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town or other Governmental Entity or to a nonprofit entity organized for purposes similar to those of the Association.

(d) the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association to exchange all or part of the Common Area for other property and consideration of like value and utility provided that:

(i) written notice of the exchange is given to each Member of the Association;

(ii) after the notice is given, those Members having the minimum percentage of votes in the Association required by the Act gives written approval of the exchange, provided, however, that Member approval is not required if the sole purpose of the exchange is to correct an encroachment;

(iii) the acreage and configuration of the remaining Common Area (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code; and

(iv) the exchange is approved by the Town.

Section 2. Delegation of Use.

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

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy such Owner's Unit, or a portion thereof, as their principal residence in Cumberland County, North Carolina.

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

Section 3. Conveyance of Title to the Association. Declarant, for itself, its successors

and assigns, covenants that, prior to the conveyance of the first Lot within any phase of the Community, Declarant will convey to the Association title to those portions of the Common Area in such phase to be owned in fee by the Association. Declarant reserves and grants (regardless of whether or not such reservation and grant is specifically set forth in such deed), for itself and its respective successors and assigns, an easement over, under, across and through the Common Area so long as it owns any portion of the Properties, for the purpose of constructing any improvements on the Common Area and/or the Lots as it or they deem necessary or advisable; provided however that, following construction of improvements, the Common Area shall be restored to its prior condition to the extent practicable. Except as otherwise stated herein, all conveyances by the Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, any applicable Sub-Association Declaration, restrictive covenants applicable to the Properties, utility, drainage, conservation, greenway and other easements of record or shown on the recorded plats of the Properties, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and maintained by the Association, a Sub-Association, the Town or other governmental entity, or a public or private utility company.

Section 4. Regulation and Maintenance of Common Area and Common Area Easements.

It is the intent of Declarant that the Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Community. To that end, by recording any plat or map of any phase or section of the Community, Declarant grants to the Association an easement over and across that portion of any Lot within such phase or section on which a Common Area Easement lies for the purpose of enabling the Association to take action permitted by subsections (b) and (c) of this Section 4.

(a) Rights and Responsibilities of the Owners. Each Owner of a Lot upon which a Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area Easement. Notwithstanding any other provision of this Declaration, no Owner or other Person shall, without the prior written consent of the Association: (i) remove any trees or vegetation from Common Area; (ii) erect gates, fences, buildings or other structures on any Common Area; (iii) place any garbage receptacles on or in any Common Area; (iv) fill or excavate any Common Area or any part thereof; or (v) plant vegetation on or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area.

It is the intent of the Declarant that a Common Area Easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to an Owner (other than the Declarant), except for changes authorized or approved in writing by the Declarant or the Association. If an Owner of a Lot on which a Common Area Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have

the right and obligation to ensure that the Common Area (including each Common Area Easement) is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Declaration or rules and regulations adopted by the Association as provided herein or in the Bylaws; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any Person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

(c) Association's Right of Entry for Maintenance of Common Area Easements.

The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area Easement, and any other portion of the Lot to the extent necessary to gain access and maintain improvements and facilities within the Common Area Easement, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Personal Obligation for Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who or which may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (i) annual assessments; (ii) working capital assessments; (iii) special assessments; (iv) individual special assessments; (v) fines for violations of the provisions of this Declaration or other Governing Documents, and assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (vi) late payment charges, interest on unpaid assessments, costs of collection (including, without limitation, court costs, service charges, and attorneys' fees, and charges for dishonored checks), all as established by the Board from time to time; and (vi) all other assessments, fees and charges imposed or allowed to be imposed by this Declaration.

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

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Community and, in particular, for: (i) acquisition, improvement, and maintenance of property, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon, including, without

limitation, storm water drainage facilities, and, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against Common Area owned by the Association in fee; (iv) procurement of insurance; (v) employment of attorneys, accountants and other Persons for Association business; (vi) payment of principal and interest on funds borrowed for Association purposes; and (vii) such other needs as may arise.

Section 3. Annual Assessments.

(a) Amount of Assessments. Until December 31, 2023, the annual assessment shall be \$300.00 for each Class A Lot. The annual assessment for Class C Lots shall be one-fourth ($\frac{1}{4}$) of the assessment for Class A Lots, and the assessment for Class B Lots shall be zero, provided, however, that *any* Lot containing a Dwelling occupied by any person as a residence shall be assessed as a Class A Lot, regardless of ownership of same.

(b) Commencement Date. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month after the Lot is subjected to this Declaration.

(c) Ratification of Budgets. The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget; provided, however, if the budget provides for an annual assessment per Lot not more than ten percent (10%) higher than the annual assessment in effect for the then-current Fiscal Year, such assessment shall be deemed ratified unless Members having at least sixty-seven percent (67%) of the votes of the entire membership vote to reject the budget. If any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board. Notwithstanding anything to the contrary herein, the Declarant, during the Declarant Control Period, may increase the annual assessment approved by Members and/or Board if in its sole discretion, the amount approved by the Members and/or Board is insufficient to meet the expected annual expenditures of the Association.

(d) Notice to Members. The Board of Directors shall notify each Member of the annual assessment to be assessed against his Lot not later than twenty (20) days before the beginning of the Fiscal Year.

(e) Uniform Rate; Collection Period. Annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

(g) Certificate of Payment. The Association shall, within ten (10) business days after receipt of a written request from an Owner or the Owner's authorized agent, and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or by a Person or employee of any Person employed by the Association and to whom the Association has delegated the authority to issue such certificates, setting forth whether the

assessments and other charges against a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment and is binding on the Association, the Board, and every Owner.

(h) Merger. The provisions of this subsection shall not apply to, nor shall they be a limitation upon, any change in the annual assessment or the Maximum Annual Assessment incident to a merger or consolidation as provided in §47F-2-121 of the Act.

(i) Monies Paid by Declarant. Any monies paid at any time by the Declarant for Common Expenses or otherwise for or on behalf of the Association shall be credited against past or future assessments due from the Declarant, if any. See Section 10 below.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may at any time levy special assessments against the Lots (or, as to expenses related to Limited Common Area, the Lots benefitted by such expenses) for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring expenses, *provided that* any such assessment shall have been approved by the Declarant (during the Declarant Control Period), and by not less than sixty-seven percent (67%)

of the votes of the Class A Members present and voting, in person or by proxy (or, as to a special assessment related to Limited Common Area, of Class A Members against whose Lot the special assessment will be levied) at a meeting of the Members, one of the purposes of which is to vote on the special assessment, and further provided that the special assessment for Class C Lots shall be one fourth ($\frac{1}{4}$) of the assessment for Class A Lots and the assessment for Class B Lots be zero. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Written notice of any meeting called for the purpose of voting on a special assessment shall be sent to all Members not less than fifteen (15) days or more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or their proxies entitled to cast fifty-one percent (51%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting.

Section 5. Individual Special Assessments. The Board may levy special assessments against the Lot of an Owner ("individual special assessments"): (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damage to the Common Area or improvements thereon caused by the act or failure to act of an Owner, his family, tenants, guests or agents, and not the result of ordinary wear and tear; (ii) for payment of fines, penalties or other charges imposed against an Owner resulting from failure to comply with the terms and provisions of this Declaration, the Bylaws, and/or any rules or regulations promulgated hereunder, including, without limitation, penalties assessed pursuant to the architectural design guidelines (if any), reimbursement to the Association of any sums expended by it for enforcement of the architectural design guidelines and/or this Declaration and/or the rules and regulations of the Association; and (iii) for the purpose of reimbursing the Association for costs (including attorneys'

fees) incurred in bringing the Owner, his Lot or his residence into compliance with the provisions of this Declaration, the Bylaws, the architectural design guidelines or other rules and regulations adopted by the Board or the Association. Declarant shall not be obligated to pay any individual special assessment except with its prior written approval. The due date of any individual special assessment levied pursuant to this Section shall be fixed in the Board resolution authorizing such assessment. Upon the establishment of an individual special assessment, the Board shall send written notice of the amount and due date of such individual special assessment to the affected Owner(s) at least thirty (30) days prior to the date such individual special assessment is due.

Section 6. Effect of Nonpayment of Assessments; Remedies. All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interests, and the costs of collection thereof, including attorneys' fees, shall be charge on the Owner's Lot as provided in §47F-3-116 of the Act and, upon filing of a claim of lien in the Office of the Clerk of Superior Court for Cumberland County in the manner provided in §47F-3- 116(g) of the Act, shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law.

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

Notwithstanding the foregoing, when the holder of a first mortgage or first deed of trust of record or other purchase of a Lot obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser.

Section 7. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 8. Exempt Property. All Common Area owned in fee by the Association, all Sub-Association Common Area, all property dedicated to and accepted by a public authority, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no Lot devoted to residential use shall be exempt from said assessments.

Section 9. Working Capital Assessments. At the time of closing of the initial sale of each Lot to a Builder or Person upon which Lot there is not a Dwelling located, \$150.00 shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. At the time of closing of the initial sale of each Dwelling constructed on a Lot, \$150.00 shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of working capital assessments is to ensure that the Association will have adequate cash available to meet its initial operating expenses or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

Section 10. Declarant's Obligation to Fund Operating Deficits. During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a Person providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant). Declarant's obligation to fund Operating Deficits may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners.

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

Section 11. Reserve Accounts. The Association shall establish one or more separate reserve accounts to fund major repairs to and replacements of Common Property including, without limitation, reserves for major repair or replacement of Stormwater Control Measures. Each annual budget shall show the amount to be placed in reserve for each category for which reserves are to be held.

Section 12. Fines. Subject to the provisions of this Declaration, the Bylaws of the Association, and Section 47F-3-107.1 of the Act, the Board of Directors shall have the right and authority to levy fines or suspend privileges or services provided by the Association for reasonable periods for the violation of any provision of this Declaration and other rules and regulations promulgated by the Board of Directors pursuant thereto, provided, however that the right of access and support, the right to drain storm water and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations. Any monetary fine shall be deemed an individual special assessment against the Lot of the Owner against whom such fine is assessed.

ARTICLE VI MAINTENANCE OF LOTS AND COMMON AREA

Section 1. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Any maintenance on a Lot that is not the responsibility of the Association, whether by the terms of this Declaration or by written acceptance of same, shall be the responsibility of the Owner of such Lot. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements that the Association is responsible for maintaining as provided in this Declaration. If an Owner does not make any repair or perform any maintenance required of such Owner, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Dwelling erected thereon, and the cost of such maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 2 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is required to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article VI.

Section 2. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in Section 2 of this Article VI, the cost of any such maintenance, replacement or repairs (including the administration fee) shall be a individual special assessment against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

Section 3. Maintenance by the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) to the extent the same is not maintained by a Sub-Association, maintain the Common Area and Common Area Easement in its natural or improved state, as appropriate, and keep it free of impediments to its use by the Owners; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any Person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Area Easement; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

Without limiting the generality of the foregoing, the Association shall maintain all Stormwater Control Measures to original approval standards in order to remain in compliance with the Stormwater Agreement and all other Legal Requirements. Without limiting the generality of the foregoing, the Association shall cause routine inspections of the Stormwater Control Measures to be performed and all required reports to be filed. The Association budget shall contain a line item for normal maintenance of the Stormwater Control Measures and a separate line item for reserves for major repairs to and replacements of Stormwater Control Measures.

ARTICLE VII RIGHTS OF LENDERS

Section 1. Books and Records. Any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, the Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding Fiscal Year, except that the Association shall not be required to provide the financial statement for the preceding Fiscal Year if said Fiscal Year expired less than 75 days prior to the date of the request.

Section 2. Notice to Lenders. Upon written request to the Association, the holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

- (a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.
- (b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.
- (d) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes as provided in Section 1(c) of Article IV hereof, nor the exchange of real property as provided in Section 1(d) of said Article IV hereof, shall be deemed a transfer within the meaning of this subsection (a). Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town of Apex or another Governmental Entity or to a nonprofit entity organized for purposes similar to those of the Association.
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;
- (c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or
- (d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements or, as provided in §47F-3-113 of the Act, for distribution to the Owners, provided, however, that, except as provided in §47F-2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners to the Association.

Section 4. Payment of Taxes and Insurance Premiums. The holders of first deeds of

trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The Persons making such payments shall be owed immediate reimbursement therefor by the Association.

Section 5. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment under the Declaration.

ARTICLE VIII EASEMENTS

In addition to all other easements granted or reserved in the Declaration and elsewhere in this Declaration, Declarant hereby grants and/or reserves the following easements.

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, sewer lines, natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or quasi-public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of ten (10) years from the date hereof, Declarant grants to and reserves for itself, the Association, and their successors and assigns, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct storm water drainage surface water runoff problems in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, the Person taking such action shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. The Person taking such action shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easement for Support. Every Lot and Unit which contributes to the lateral and/or vertical support of any adjoining(s) shall be burdened with an easement of support for the benefit of such adjoining(s).

Section 3. Easement for Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the

continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant.

Section 4. Easement over Common Area. A perpetual, nonexclusive easement over, under and through the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing reasonable access, ingress and egress to, from and over and the use of the Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Common Area is subject to the easements granted herein.

Section 5. Association's Easement upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

Section 6. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

Section 7. Easements for Private Contractors. The Association shall have the right to assign its rights and delegate its duties to any Person. In the event that the Association employs or engages any Person to provide security within the Properties, perform inspections of improvements, collect garbage, or perform any other function, an easement is established over the Common Area and every Lot for the benefit of such contractors for such purposes.

Section 8. Easements for Development. For so long as Declarant owns any real property within the Properties, Declarant reserves an easement over the Properties for the purpose of allowing Declarant to develop the Properties and construct improvements thereon.

Section 9. No Liability for the Town. In no event shall the Town be responsible for replacing any plants, trees, fences, driveway or other structures located within any utility easement.

Section 10. Existing Easements. The Property is currently subject to the Glide Slope Easement of Fort Liberty recorded in Book 9492, Page 446, Cumberland County Registry and adjoins a Duke Energy transmission line easement. Neither the Declarant, the Builders, the Owners, the Members nor the Association has control of nor shall have any liability of any kind for or as a result of noise, noise abatement, or power line exposure or other nuisances or injury resulting from either easement.

ARTICLE IX ARCHITECTURAL CONTROL

After occupancy of the Dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including identification signs), wall or other structure (including play equipment) shall be commenced, constructed, erected or maintained upon a Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or re-landscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. Declarant shall have the right to charge a reasonable fee, not to exceed \$150.00, for receiving and processing each application and the right (but not the obligation), at the expense of the Owner seeking approval of the Improvements, to employ an engineer or other professional to review the plans for the Improvements. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Properties.

Declarant may, at any time, delegate the review and approval authority contained in this Article to the Board of Directors of the Association, which, in turn, may delegate such authority, to an Architectural Committee composed of three or more persons appointed by the Board. Declarant shall delegate such authority no later than the end of the Declarant Control Period.

Any use of the term "Declarant" in this Article shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by the Declarant.

Declarant shall have and shall exercise the rights set forth herein as to a Lot at all times prior to issuance of a certificate of occupancy or other certificate issued by the Town or appropriate governmental entity for the Dwelling constructed on a Lot.

ARTICLE X USE RESTRICTIONS

Section 1. Land Use. Except as specifically provided herein, Lots shall be used for residential purposes only. An Owner may maintain an office or home business in such Owner's Dwelling if: (i) such office or home business is operated by the Owner or a member of the Owner's household residing in the Dwelling; (ii) there are no displays or signs indicating that the Dwelling is being used other than as a residence; (iii) such office or business does not generate significant

traffic or parking usage (as determined by the Board) by clients, customers or other Persons; (iv) no equipment, vehicles or other items related to the office or business is stored, parked or otherwise kept outside of an approved enclosure; (v) such Owner has obtained from the appropriate government entity and maintains in effect, all required approvals and permits for such use; (vi) the activity complies with all Legal Requirements; (vii) the Owner has obtained prior written approval from the Board and thereafter registers annually with the Board as long as the operation of the home business continues. As a condition to such use, the Board may require the Owner to pay any increase in the rate of insurance, utilities or other costs for the Association or other Owners which may result from such use.

Notwithstanding the foregoing, the Declarant shall have the right to and may, in writing, permit other Persons to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and other uses consistent with the development of the Subdivision and the sale and construction of homes therein; (ii) maintain spot-lighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary; and (iii) conduct any other activities on Lots to benefit development, sales and construction efforts. Additionally the Declarant, Owners, real estate brokers and their agents may show Lots and homes for sale or lease.

Section 2. Building Setbacks; House Location. No Dwelling shall be erected or maintained on any Lot outside of the building envelope required by the Code. For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the Dwelling only to the extent that the same are deemed to be part of the Dwelling under the Code as it exists as of the date of issuance of a certificate of occupancy for such Dwelling. Any Dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a Dwelling may be erected so as to face either street or the intersection of the two streets on which the Lot abuts.

Section 3. Waiver of Violations. Declarant, or the Persons to whom the architectural review and approval authority has been delegated pursuant to Article X of this Declaration, may, but shall not be obligated to, waive any violation of the designated and approved building setback lines on any Lot, provided that, no waiver may be granted for a violation in excess of 25% of the applicable requirements, nor shall any waiver be granted unless the Lot and all improvements thereon comply with the Code, or a variance has been granted by the Town for same. No such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the Code or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Registry.

Section 4. Fences. Any fence or wall installed within the Subdivision must meet all requirements of the Code and must be approved as provided in Article IX of this Declaration. Chain-link fences will not be permitted. Nothing in this Section shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots or to any fence installed by the Declarant at any entrance to or along any street within the Subdivision.

Section 5. Temporary Structures. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

Section 6. Parking; Driveways and Parking Pads; Abandoned Vehicles. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway or parking pad. No Owner nor tenant shall park their vehicles on any streets and/or street shoulders within the subdivision. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall be approved as provided in Article IX hereof.

No mobile house trailer (whether on or off wheels), recreational vehicle, trailer or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any street or any Lot within the Subdivision. No boat, boat trailer, or any other trailer shall be parked on any street within the Subdivision. A boat, boat trailer, or other trailer may be parked or kept on a Lot if it is parked or kept in the garage or approved out-building (and the door of the garage or out-building can close completely) or otherwise in such a manner that the boat and trailer are screened from the street, the Common Area, and other Lots. Screening may include an approved fence and plantings, but, in any case, the screening must comply with the Code and be approved pursuant to Article IX of this Declaration.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Subdivision or the Common Area, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot. Vehicles without current registration and inspection stickers are considered abandoned or inoperative.

Section 7. Animals. No animals, livestock or poultry of any kind shall be kept on any Lot, except that up to three cats, two dogs, and other ordinary household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose and that they do not become a nuisance to other Owners within the Properties. The Board shall have the right, in its sole and absolute discretion, to determine whether or not a particular animal is a nuisance and to require removal. No Person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on the Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's Lot. The owner of a permitted animal shall be responsible for removing and cleaning up any excrement deposited by such animal on any Lot, street right of way, or the Common Area.

Section 8. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted.

Section 9. Signs. Except as otherwise required by the Town, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, not more than one (1) sign of not more than six (6) square feet advertising the property for sale or rent, and not more than three (3) signs of not more than six (6) square feet expressing support of or opposition to political candidates or other issues which will

appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election. No sign of any kind shall be displayed on the Common Area without the prior written consent of the Declarant or, after the end of the Declarant Control Period, of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot or Parcel which it owns and on the Common Area in connection with the development and sale of the Properties.

Section 10. Antennas; Satellite Dishes. No television, radio or other electrical towers, aerials, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon unless approved in accordance with Article IX hereof, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, §1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules adopted by the Association may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); (iii) is integrated with the Dwelling and surrounding landscape; and (iv) is approved pursuant to Article IX of this Declaration.

Section 11. Swimming Pools. No above-ground swimming pools are permitted in the Subdivision, except that small, inflatable wading pools shall be permitted in the back yard of a Dwelling, as seasonally appropriate.

Section 12. Mailboxes. No mailbox, other than Subdivision standard mailboxes specified by the Declarant, shall be placed or maintained on any Lot unless the same has been approved in writing in accordance with the provisions of Article IX of this Declaration.

Section 13. Damage and Reconstruction. In the event that any Dwelling or other structure on a Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the Owner of such Lot shall repair the damage and reconstruct the improvement within nine (9) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the Owner may, at his option, either completely remove the damaged structure and landscape the area on which the structure stood or repair or reconstruct the structure.

All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The Owner of each Lot shall at all times keep public streets free abutting his Lot from any dirt, mud, garbage, trash or other debris resulting from construction on his Lot.

Section 14. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage

cans stored behind the Dwelling in such a manner as not to be visible from the street upon which the principal building fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to an approved enclosure the night of the scheduled pickup. Trash containers used by the Declarant or, with the approval of the Declarant, by a Builder during construction are exempt from this provision.

Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any applicable legal requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or installation of streets and utilities in the Properties, or as may be allowed by Declarant, during the Declarant Control Period, and thereafter, the Board, when reasonably required for the construction of other improvements within the Subdivision.

Section 15. Restrictions on Rental of Dwellings. An Owner may lease or sublet his/her dwelling; however, any lease or sublease must be for at least six (6) months, in writing and contain the following provision:

“Tenant shall obey, adhere to and be bound by all provisions of the Declaration of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Caelin Farms, recorded in the Cumberland County Registry. Tenant acknowledges that he has received a copy of such Declaration and the rules and regulations of the Association and is familiar with the provisions of same.”

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Notwithstanding the above provisions, the Association reserves the right to grant a variance under this Section 15.

Section 16. Street Lighting. Declarant reserves the right to subject the Properties to a contract with Duke Energy or other public utility or entity providing for installation and operation of street lighting, which requires a continuing monthly payment to Duke Energy by each residential customer or by the Association.

Section 17. Impervious Surface. Lots in the Subdivision may be subject to restrictions on the amount of total square footage of the Lot that may be covered by impervious surfaces, as established by the Town and more specifically shown on the plats of the Subdivision recorded in the Registry. Such impervious requirement may limit an Owner from constructing new or expanding existing Dwellings, porches, patios and decks, parking pads and garages, and/or outbuildings.

Section 18. Wetlands. Portions of the Properties may have been determined to meet the requirements for designation as a regulatory wetland or riparian area. Notwithstanding anything to

the contrary that may appear herein or in any amendment hereto, Annexation Declaration or Sub-Association Declaration, any subsequent fill or alteration of any portion of the Properties that has been determined to be a regulatory wetland or riparian area under applicable laws of the United States or the State of North Carolina shall conform to the requirements of applicable wetland or riparian area rules adopted by the United States or the State of North Carolina and in force at the time of the proposed alteration. The intent of this paragraph is to prevent additional wetland or riparian area fill or degradation as defined by the U.S. Army Corp of Engineers or other applicable governmental authority.

ARTICLE XII GENERAL PROVISIONS

Section 1. Enforcement. The Association and each Owner (including the Declarant) shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 2. Term; Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated by a vote of eighty percent (80%) of the Owners after the expiration of such twenty-five (25) year period.

This Declaration may be amended by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Lots and only in strict compliance with §47F-2-112 of the Act, provided, however, that Declarant's rights hereunder may not be amended or altered without the prior written consent of Declarant. Any amendment must be properly recorded and shall take effect only upon recording. For the purpose of this section, additions to existing property as provided in Article II, Section 2 hereof correct shall not constitute an "amendment".

Notwithstanding the foregoing, Declarant, without the consent or joinder of any Person, may amend this Declaration during the Declarant Control so long as such amendment does not adversely affect title to or use of any Owner's Lot or any Owner's use of the Common Area.

No amendment shall be effective unless it has been approved, if required, by the Town, and recorded in the Registry.

Section 3. Subdivision of Lots. No Lot within the Community may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Community,

except with the consent of the Declarant during the Declarant Control Period, and thereafter by the Association, and, if required, by the Town of Apex. Community or recombination of any Lot(s) may, as appropriate, increase or decrease the number of votes in the Association.

Section 4. Rules and Regulations; Remedies. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots and shall furnish a written copy of said rules and regulations to the Owner of each Lot at least fifteen (15) days before such rules and regulations become effective.

Without limiting the generality of the foregoing, the Board of Directors shall have the right to establish rules and regulations governing the use of any amenities constructed within the Community including, without limitation, swimming pools and other recreational amenities, boat docks, slips and piers located within the Properties, including, without limitation, the right of the Association to require that fees and other charges be paid as a condition of such use (which fees and charges, if not paid, may be an individual special assessment against the Lots).

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or the restrictive covenants and other use restrictions applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall be deemed a individual special assessment and a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area; provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Common Area if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association, provided, however, that the Association may not suspend such Owner's right of access to or any utilities or drainage facility servicing his Lot.

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

Section 5. Condemnation/Casualty. If all or any part of the Common Area and improvements thereon is taken by power of eminent domain or is damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements except as provided in §47F-3-113(g) of the Act, in which event the proceeds shall be retained by the Association for operation expenses

or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Area in lieu of a destroyed club house.

Section 6. Association Contracts and Leases during Declarant Control Period. All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period must: (i) be for a term of two years or less; (ii) be terminable by the Association, without penalty, upon no more than ninety (90) days written notice; and (iii) be commercially reasonable.

Section 7. Evidence of Member Approval. In the event that any action requires evidence of consent of the Members or a specified percentage of the Members, such approval shall be conclusively presumed if supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

 CERTIFICATE OF THE CAELIN FARMS HOMEOWNERS ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the CAELIN FARMS HOMEOWNERS ASSOCIATION, INC., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of ____ votes were cast: _____ votes were cast in favor of such action, and _____ votes were cast against such action. Accordingly, the motion to approve [described the action approved] was approved by at least ____% of the Members as required by the Declaration and Bylaws of the Association.

 [President/Secretary]

Section 8. Number and Gender. Whenever the context requires, the singular shall include the plural, and *vice versa*, and one gender or neuter shall include both genders and neuter.

Section 9. Captions. Captions are for the purpose of reference only and shall not be deemed to be in any manner interpretive of any provision of this Declaration.

Section 10. Severability. If any provision of this Declaration is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of the Declaration and shall not be deemed to nullify or affect any other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

If any item, term or provision contained in this Declaration is in conflict with any applicable federal, state or local laws, this Declaration shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.

Section 11. Conflicts. In the event of a conflict between any provision of this Declaration

and the Declaration, the more restrictive provision shall control. In the event of a conflict between this Declaration and the Article of Incorporation of the Association, the Articles of Incorporation shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control.

Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act, the North Carolina Nonprofit Corporation Act (N.C.G.S. Chapter 55A), and the Code shall in all cases control over any construction inconsistent therewith. The provisions of the Act and the Nonprofit Corporation Act shall in all cases control any conflicting provisions of the Code.

Section 12. Rule against Perpetuities. As provided in §47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, or rules and regulations adopted pursuant to thereto and §47F-3-102(1) of the Act. In the absence of the protection provided in §47F-2-103(b) of the Act, if any provision of this Declaration violates any applicable rule against perpetuities, such provision shall be deemed amended to be and remain in effect for the maximum period of time that such provision could be in effect without violating the applicable rule against perpetuities.

Section 15. Declarant. Nothing contained in this Declaration shall be construed to permit interference with the development of the Lots by Declarant and construction of homes by Builders so long as said development and construction follow the general plan of development previously approved by the Town. The restrictions contained herein shall not be deemed to apply to any sales office, signs, landscaping construction trailer, model home, or other temporary or permanent improvement installed by or with the approval of Declarant.

Section 16. Non-Discrimination. Neither the Association, the Board, any committee of the Board, any member of the Board or committee, nor any officer of the Association, in exercising its/his/her rights and obligations under this Declaration or the Articles of Incorporation or Bylaws, shall discriminate against any person on the basis of the race, color, religion, national origin or handicap of such person.

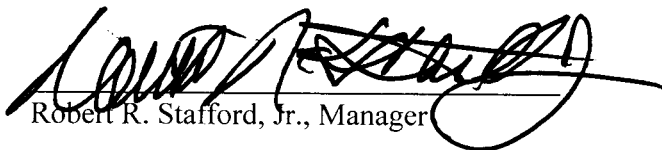
Section 17. Security Measures. Neither the Association nor the Board shall have any responsibility for establishing or maintaining any security measures within the Properties, such measures being the sole responsibility of each Owner, as to his Lot and property, and to the appropriate public officials including, without limitation, the Town of Spring Lake Police Department.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized Trustee, as of the date set forth in the notary acknowledgment below.

DECLARANT:

Caelin Farms LLC

By:

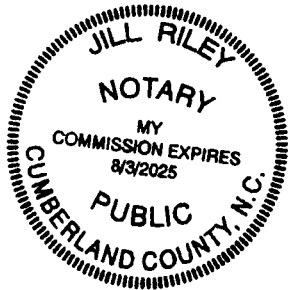

Robert R. Stafford, Jr., Manager

STATE OF NORTH CAROLINA – COUNTY OF MOORE:

I certify that the following person personally appeared before me this day and acknowledged to me that he signed the foregoing document for the purposes stated therein and in the capacity indicated: Robert R. Stafford, Jr.

Date: Sept 25, 2023

(Stamp or Seal)



(N.P. SEAL)

Jill Riley
Signature of Notary

Printed Name: Jill Riley

My commission expires: 8-3-2025

EXHIBIT A

**Being all of the real property shown on plat entitled "Caelin Farms Phase 1 Lots 2-41"
recorded in Plat Book 8 Page 81, Cumberland County Registry**