



Instrument #: 2024011790
Recorded: 07/08/2024 02:59:21 PM
Fee Amt: \$194.00 Page 1 of 57

Harnett County, North Carolina
Matthew S. Willis, Register of Deeds
BK 4242 PG 1518 - 1574 (57)

COVER SHEET

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, AND ASSESSMENTS FOR
THE PRESERVE AT KIPLING CREEK**

**RECORDED IN HARNETT COUNTY
MATTHEW S. WILLIS
REGISTER OF DEEDS**

RETURN TO:

Amanda Snow, Esq.
 Garden Street Communities Southeast, LLC
 100 West Garden Street, 2nd floor
 Pensacola, Florida 32502

**STATE OF NORTH CAROLINA
 COUNTY OF HARNETT**

**DECLARATION OF COVENANTS, CONDITIONS,
 RESTRICTIONS, EASEMENTS, AND ASSESSMENTS FOR
THE PRESERVE AT KIPLING CREEK**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, AND ASSESSMENTS FOR THE PRESERVE AT KIPLING CREEK (the “Declaration”) is made on this 29th day of MAY, 2024, by **GARDEN STREET COMMUNITIES SOUTHEAST, LLC**, a Florida limited liability company f/k/a Esplanade Communities of Florida, LLC, and its successors, assigns and designees (“Declarant”), who is joined in by **THE PRESERVE AT KIPLING CREEK HOMEOWNERS ASSOCIATION, INC.**, a North Carolina non-profit corporation (“Association” or “HOA”).

RECITALS:

WHEREAS, Declarant is the sole owner and developer of the Property, which is more particularly described in Exhibit “A”; and

WHEREAS, Declarant desires this Declaration, the Articles of Incorporation, and the Bylaws to be filed in order to protect and maintain the integrity of the design and security of the HOA and its Members’ investments; and

WHEREAS, Declarant intends to subdivide the Property into a subdivision named **THE PRESERVE AT KIPLING CREEK**; and

WHEREAS, Declarant has caused the incorporation of **THE PRESERVE AT KIPLING CREEK HOMEOWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, for purposes of enforcing this Declaration and exercising the functions described herein.

NOW THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to this Declaration, as wells as the Articles of Incorporation and Bylaws, and shall be appurtenant to and running with the land and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof or part added thereto, and their respective heirs, successors and assigns, as their respective interests may appear.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration shall have the following meaning(s):

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

Section 2. “Additional Property” shall mean and refer to any real property, other than the real property described in Exhibit “A”, attached hereto that may be submitted by Declarant or any third party authorized by Declarant to the terms and provisions of this Declaration by a Supplemental Declaration, which shall be executed by the owner of the Additional Property and need not be joined in by any other person or Owner. No portion of any Additional Property shall be encumbered by this Declaration unless and until such Additional Property is added by a Supplemental Declaration by the fee simple owner thereof. In the event any Additional Property becomes encumbered by this Declaration, then, and only then in such event, the term “Property” as used herein shall also include the Additional Property.

Section 3. “Amendment(s)” shall mean any and all amendments to this Declaration, all of which shall be consecutively numbered beginning with the “First Amendment to the Declaration of Covenants, Conditions, Restrictions, Easements and Assessments for The Preserve at Kipling Creek”, and each of which shall be properly adopted pursuant to the terms of the Association Documents and recorded in the Public Records of the County; provided however, the failure to so consecutively number such Amendments shall not impair their validity hereunder and such Amendments to the extent not otherwise numbered will be deemed to have been numbered in chronological order of their appearance in the Public Records of the County. “Amendment(s)” shall also mean any and all amendments to any Supplemental Declaration, as recorded in the Public Records of the County.

Section 4. “Architectural Control Committee” or “ACC” shall be a committee composed of at least three (3) members, all initially appointed by the Declarant, that shall approve or disapprove submitted plans and specifications for any improvements located on any part of the Property.

Section 5. “Area of Common Responsibility” shall mean and refer to the Common Area together with those areas and improvements, if any, upon a Lot, the maintenance, repair or replacement of which is the responsibility of the Association. All Common Areas, together with easements over Lots and any leased property shall be Areas of Common Responsibility, provided, however, that the Association shall not be responsible for planting or maintaining grass or shrubs within any easement that crosses a Lot.

Section 6. “Articles” or “Articles of Incorporation” shall mean the document filed with the North Carolina Secretary of State, which incorporates the Association under the laws of North

Carolina and is attached to this Declaration as Exhibit “C” and is made a part of this Declaration, as amended.

Section 7. “Assessment(s)” shall mean a sum or sums of money payable to the Association, or other owner of Common Areas, or to recreational facilities and other properties serving the parcels by the Owners of one (1) or more Lots as authorized in the governing documents, which if not paid by the Owner of a Lot, can result in a lien against the Lot.

Section 8. “Association” or “HOA” shall mean and refer to **THE PRESERVE AT KIPLING CREEK HOMEOWNERS ASSOCIATION, INC.**, incorporated and organized under the laws of the State of North Carolina as a nonprofit corporation.

Section 9. “Association Documents” shall mean, collectively, this Declaration and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto, the Articles of Incorporation and any duly adopted amendments, the Bylaws and any duly adopted amendments, and rules and regulations adopted under the authority of this Declaration, the Articles or the Bylaws.

Section 10. “Board” or “Board of Directors” shall mean the appointed or elected body governing the Association as provided by North Carolina corporate law.

Section 11. “Builder” shall mean **ADAMS HOMES AEC, LLC**, a South Carolina limited liability company, its successors and assigns. Builder shall have the right to assign any and/or all of its interest as Builder in whole or in part on an exclusive or non-exclusive basis. Such assignment shall be in writing and recorded in the official records of the County in which the Property is located and shall state the specific right or interest being assigned. Builder shall not take or assume any obligations, responsibilities, and/or liabilities related to the actual development of the Subdivision and the term “developer”, as defined North Carolina law, is a distinct term of art that shall not be construed to place any obligations, responsibilities, and/or liabilities on Builder, unless Builder specifically accepts such obligations, responsibilities, and/or liabilities in writing.

Section 12. “Bylaws” shall refer to the code adopted by the HOA for regulating and managing the affairs of the HOA, attached to this Declaration as Exhibit “B” and made a part of this Declaration, as amended.

Section 13. “Common Area” or “Common Property” shall mean all real and personal property, and interests therein, now or hereafter owned by the HOA for the common use and enjoyment of the Owners and all areas within the Subdivision, which are or have been dedicated or deeded to the HOA or as designated on Plat as Common Area. Specifically, included as Common Area are all Stormwater Management Facilities located within the Subdivision. The Stormwater Facilities are located on land that is owned by the Association. No construction activities may be conducted within any portion of the Stormwater Management Facilities. Prohibited activities include, but are not limited to: digging or excavation; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the Stormwater Management Facilities. If the project includes a wetland

mitigation area, as defined in the appropriate federal or state regulations, or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval.

Section 14. “Common Expenses” shall mean the expenses incurred by or financial liabilities of the HOA, together with any allocations to reserves, if applicable, for the common benefit of Members.

Section 15. “Community” shall mean the real property that is or will be subject to a declaration of covenants, which is recorded in the official records of the County. The term “Community” includes all real property, including undeveloped phases (if applicable), together with any approved modification thereto.

Section 16. “County” shall mean and refer to Harnett County, North Carolina.

Section 17. “Declarant” shall mean and refer to **GARDEN STREET COMMUNITIES SOUTHEAST, LLC**, a Florida limited liability company f/k/a Esplanade Communities of Florida LLC, its successors, assigns, and designees. The Declarant specifically reserves the right to assign any and/or all of its interest as Declarant in whole or in part on an exclusive or non-exclusive basis. Such assignment shall be in writing and recorded in the official records of the County and shall state the specific right or interest being assigned. An Owner shall not, solely by the purchase of a home and/or Lot, be deemed a successor or assign of Declarant under the Association Documents unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Declarant.

Section 18. “Declaration” shall mean this instrument as it may be amended from time to time, together with any Supplemental Declaration(s) or Amendment(s) thereto, which may be recorded amongst the official records of the County in accordance with this Declaration.

Section 19. “Design Guidelines” shall mean those ACC rules and guidelines if and when published by the ACC as same may adopted and/or amended by ACC from time to time.

Section 20. “Director(s)” shall mean a member of the Board of Directors of the Association.

Section 21. “Entry Features” shall mean those portions of the Property upon which permanent identification signs or monuments shall be initially installed and erected by Declarant at various entrances of **THE PRESERVE AT KIPLING CREEK** Subdivision.

Section 22. “Governing Authority” shall mean any and all city, County, state, and federal governmental or quasi-governmental agencies, bureaus, departments, divisions, or regulatory authorities having jurisdiction over any portion of the Property.

Section 23. “Lot” shall mean and include each parcel of land duly recorded and identified by the Plat of the Subdivision intended or designed for the construction thereon of a

private single-family residential dwelling unit. Lot shall additionally mean and include each parcel of land described by metes and bounds intended or designed for the construction of private single-family residential dwelling units. Lot shall not include areas of future development for which a subdivision plat has not been recorded.

Section 24. “Member(s)” or “Membership” shall mean Owner, Declarant(s), and/or Builder(s) of any class who holds ownership in the HOA.

Section 25. “Officer” shall mean a natural person appointed or elected by the Board.

Section 26. “Owner” or “Lot Owner” shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title or beneficial use of any Lot situated within the Subdivision, but shall not include mortgagees unless the mortgagee has acquired title by foreclosure or deed in lieu of foreclosure.

Section 27. “Plat(s)” shall mean a recorded Subdivision map or plat of the Property, or any part thereof, recorded in the public records of the County in which the Property is located, made subject to the terms hereof. Plats for future phases, if any, for lands annexed to the control of this Declaration shall be as referenced in the recorded annexation document for such future phase.

Section 28. “**THE PRESERVE AT KIPLING CREEK**” Subdivision shall mean and refer to all existing properties and additions thereto which are subject to this Declaration and any Supplemental Declaration under the provisions hereof.

Section 29. “Property” shall mean and refer to that certain real property made subject to this Declaration, as defined in Exhibit “A”, and any and all other additional property hereinafter made subject to this Declaration.

Section 30. “Rules” shall mean the rules and regulations promulgated from time to time by the Board of Directors in accordance with the Association Documents.

Section 31. “Stormwater Management Facilities” means a system, including drainage easements, that is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quality and quantity of discharges from the system, as permitted pursuant to applicable law, as amended. No construction activities may be conducted relative to any portion of the Stormwater Management Facilities. Prohibited activities include, but are not limited to: digging or excavation; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the Stormwater Management Facilities. If the project includes a wetland mitigation area, or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from the appropriate Governing Authority.

Section 32. “Structure” shall mean anything or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse, bathhouse, covered or uncovered patio, playhouse, treehouse, swimming pool, fence, recreational equipment, curbing, paving, wall, sign, signboard, onsite sanitary system, dock, gazebo, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot, and any excavation, grading, fill, ditch, diversion, dam, or other thing or device which affects or alters the flow of any waters from, upon or across any Lot.

Section 33. “Subdivision” shall mean all Property within the areas shown of the Plat or Plats of **THE PRESERVE AT KIPLING CREEK**.

Section 34. “Supplemental Declaration” shall mean any instrument executed by the owner of any real property, which, when recorded in the official records of the County, shall commit such real property to the provisions of this Declaration, and shall be the only method of committing such real property to the provisions of this Declaration. Property not owned by the Declarant may not be committed to the provisions of this Declaration by Supplemental Declaration without the prior express written authorization of the Declarant. A Supplemental Declaration may also add additional restrictions, declare certain properties to be or not to be Association property, or withdraw properties from the Property and the provisions of this Declaration. The Association shall join in the execution of any Supplemental Declaration at the request of Declarant, but such joinder shall not be required to make any such Supplemental Declaration effective, unless expressly provided herein. The Owners shall not be required to join in the execution of any Supplemental Declaration but shall nevertheless be bound thereby. Supplemental Declarations shall be numbered consecutively beginning with the First Supplemental Declaration to the Declaration of Covenants, Conditions, Restrictions, Easements and Assessments for The Preserve at Kipling Creek.

Section 35. “Wetland Conservation Area” or “Conservation Area” shall be those indicated on the recorded Plat should any exist.

ARTICLE II

PLANNED COMMUNITY ACT

Declarant intends to create a planned community subject to the provisions of Chapter 47F of the North Carolina General Statutes. Nothing contained herein shall serve to limit any rights, procedures, enforcement mechanisms, or otherwise as provided in the North Carolina Planned Community Act (the “Planned Community Act”). However, if there is any conflict between the Planned Community Act and this Declaration, this Declaration shall control unless prohibited under the Planned Community Act.

ARTICLE III

LOT OWNERS’ RIGHTS

Section 1. General Rights. Each Owner shall have all rights and title of a fee simple Owner of real property with respect to any Lot owned and may exercise full proprietary interest

therein subject only to the covenants contained in this Declaration and to any other conditions voluntarily contracted. All easements, reciprocal easement agreements, amendments and supplements to the Declaration, as well as provisions of the Articles of Incorporation and Bylaws, shall be construed to be "other conditions voluntarily contracted".

Section 2. Common Area Rights. Upon Declarant conveying such Common Area, made up of real and/or personal property, to the HOA, every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot; provided, however, no Owner shall do any act that interferes with the use and enjoyment of the Common Area by all other Owners, subject to the following provisions:

(a) The right of the Association to charge reasonable fees for the use of any recreation facility situated upon the Common Area and to impose reasonable limits upon the number of guests who may use these facilities, hours of use, and any additional restrictions or limitations of use that may be contained in the rules and regulations adopted by the Association.

(b) The right of the Association to suspend the right to the use of the Common Area by an Owner for any period during which any Assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any other infraction of the Association Documents or the rules and regulations of the HOA, provided that such suspension shall not interfere with such Owner's access to such Owner's Lot.

(c) The right of the Declarant and the Association to grant easements in and to the Common Area for utility services, including cable television, rights in favor of adjacent property owners, when needed to grant ingress, egress and maintenance easements for access to commonly used or other improvements used by the owner(s) of said adjacent property or otherwise, and other public uses that benefit the Subdivision as a whole.

(d) The right of the Association to borrow money for the purpose of improving the Common Area or acquiring additional Common Area Property; provided, however, the Common Area cannot be mortgaged without the consent of the Owners entitled to cast eighty percent (80%) of the total votes in the Association, in person or by proxy, in writing at a duly called meeting at which a quorum is present.

(e) The rights of the Association to dedicate, transfer and convey all or any part of its right, title and interest in the Common Area to any public agency, authority, or utility or, subject to such conditions as may be agreed to by the Owners, to any other person for such purposes; provided, however, the Common Area cannot be conveyed without the consent of the Owners entitled to cast eighty percent (80%) of the total votes in the Association, in person or by proxy, in writing at a duly called meeting at which a quorum is present.

(f) Access afforded to police, fire and other public and emergency vehicles.

(g) Entrance gates, if they exist within the Subdivision, will remain open seven (7) days per week from 7 a.m. to 7 p.m. until neither Declarant nor Builder own a Lot or any property within the Subdivision.

Section 3. Access. Each Owner shall have the right to ingress and egress over and across the Common Areas and private rights of way, if any, as necessary for access to the Owner's Lot and shall have the right to lateral support for the Owner's Lot. Provided however, the Declarant reserves the right to install entry/exit gates and related hardware and software, in its sole discretion, and if constructed, the costs of maintenance and operation thereof shall be that of the Association as a Common Expense.

Section 4. Guests and Invitees. Each Owner, subject to the restrictions of the Bylaws, may delegate the Owner's right to use and enjoy the Common Area facilities to family members, tenants, social and business invitees, subject to the Rules promulgated by the Association.

Section 5. Limitation Upon Use of Common Areas. No Owner may plant, garden or erect or maintain fences, hedges, walls, structures or other improvements upon the Common Area except those improvements installed by the Declarant in connection with the development of the Property or as approved by the ACC. The Board or Officers may establish reasonable rules and regulations concerning the use of the Common Area facilities. These regulations shall be binding upon each Owner, and the Association may impose reasonable monetary fines and other sanctions for violation of the rules.

Section 6. Existing Property. The real property, which is and shall be held, conveyed and occupied subject to this Declaration, is located in Harnett County, North Carolina, and is more particularly described in Exhibit "A", attached hereto and made a part hereof, and incorporated by reference.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Ownership. It shall be mandatory that any person or entity who is the Owner of record of the fee simple interest in any Lot and entitled to the beneficial enjoyment and obligations thereof shall be a Member of the Association and entitled to the beneficial enjoyment thereof. Ownership of the Lot shall be sole qualification for Membership in the Association, and Membership shall not run to persons who hold an interest in a Lot merely as security for performance of an obligation. When any Lot is owned of record in joint or multiple tenancy, the multiple Owners shall designate, by written notice to the Association, a representative to be the Owner/Member entitled to vote. If no representative is designated by the Owners, the Board of Directors may select one (1) of the Owners of record or person exercising beneficial use of the Lot to be the representative for the Lot until one (1) is designated by the Owners, unless the Owners of the Lot cannot agree; in which case, no vote may be cast for that Lot until selected by the Owners.

Section 2. Voting. The Association shall have the following two (2) classes of voting Membership:

- (a) Class "A". Class "A" Members shall be all Owners, with the exception of Class "B" Members, if any. Class "A" Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for ownership by Section 1 hereof; there shall be only one (1) vote per Lot;
- (b) Class "B". The Class "B" Members shall be the Declarant and Builder, as well as any successor of Declarant or Builder, who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant. The Class "B" Member shall be entitled to ten (10) votes per Lot owned; provided however, Class "B" Membership shall cease and convert to Class "A" Membership on the happening of any of the following events, whichever shall first occur:
 - i. Three (3) months after ninety percent (90%) of the Lots in the Community, including all Additional Property (as described herein) that will ultimately be operated by the Association, have been conveyed to Class "A" Members; or
 - ii. Declarant, in its sole and absolute discretion, elects to terminate its Class "B" Membership by written notice of such election delivered to the Association (whereupon the Class "A" Members shall be obligated to elect the Board and assume control of the Association).

Notwithstanding that there shall be two (2) classes of voting Membership in the Association, voting shall be based upon the votes cast by the Membership as a whole, not on votes cast by or within each class of voting Membership. From and after the happening of these events, whichever occurs earlier, the Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each residential Lot in which it holds the interest required for ownership under Section 1 hereof. At such time, the Declarant shall call a meeting, as provided in the Bylaws for special meetings, to advise the Membership of the termination of Class "B" status and conduct a turn-over meeting. Declarant's failure to conduct such meeting shall not affect or nullify Declarant's termination of any of its rights or obligations. So long as Declarant has one (1) Lot in the Subdivision, Declarant shall have the right to appoint one (1) Owner to the Board of Directors.

- (c) Proxies. Owners may vote by proxy, but only on subject matter previously noticed to the ownership as an agenda item.

Section 3. Powers. The Association shall have such general powers as are necessary to perform the obligations and duties set out in this Declaration, including but not limited to: buy and convey real property, conduct social activities, enter into contracts, install and maintain irrigation in Common Areas, hire a management company, make capital improvements, indemnify Officers and directors, adopt rules and regulations for the general well-being of the Subdivision,

levy fines against delinquent Owners and their Lot, obtain and maintain such policies of insurance as required by the Declaration and such other policies as the Board deems necessary and desirable for the protection of the Association and its Owners. The Association may maintain a working capital and contingency fund and pay taxes and other obligations of the Association and may segregate funds to maintain reserve, trust, or escrow accounts for the Owners to accumulate and preserve funds for anticipated improvements.

Section 4. Annual Meetings. The annual meeting of the Association shall be held in the third week of January of each year on a date and at a time and place as set by the Board. The Board also has the power to change the date, time and place of the meeting for the convenience of the Membership in accordance with the Bylaws.

Section 5. Directors. The manner in which the Directors are elected or appointed is set forth in the Bylaws, attached herein as Exhibit "B".

Section 6. Officers. The Officers of this Association shall be a president, a secretary, and a treasurer, and such other Officers as the Board may from time to time by resolution create. The manner in which the Officers are elected, appointed and removed (as well as the Officers' duties) is set forth in the Bylaws, attached herein as Exhibit "B".

Section 7. Title to Association Property. To the extent herein provided, the Property is hereby dedicated to the joint and several use in common of the Owners of all Lots that may, from time to time, constitute part of the Property. Upon the completion of construction of a home on each Lot located within the Property and any Additional Property to be added by Declarant, or at such earlier time determined by Declarant, in Declarant's sole discretion, the Declarant or its successors and assigns shall convey and transfer to the Association, by quit claim deed or by plat or both (whichever is required by the Governing Authority), the fee simple title to the Association Property free and clear of any liens, and the Association shall accept such conveyance, holding title for the Owners as aforementioned. Such conveyance shall be subject to any real estate taxes and assessments due with respect to such Association Property from and after the date of recording this Declaration; any covenants, conditions, restrictions, permits, reservations and limitations then of record; the easements herein set out; any zoning ordinances then applicable; and this Declaration, as the same may be amended from time to time.

Section 8. Acceptance of Association Property. At the time of conveyance of the Association Property or any portion thereof, the Association shall be required to accept such Property and the personal property, if any, and improvements appurtenant thereto. The Association hereby agrees to accept the Association Property and the personal property and improvements appurtenant thereto in "AS IS", "WHERE IS" condition, without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Association Property or any portion thereof, and the personal property and improvements appurtenant thereto.

The Association shall accept any such conveyance of the Association Property and shall pay all costs of such conveyance, including, but not limited to, documentary stamps and other taxes of conveyance, recording charges, title insurance expenses and insurance fees. The conveyance shall

not, however, impair in any way the Declarant's rights and easements as set forth in this Declaration.

The Owners (including Declarant as to Lots owned by it) shall have no personal liability for any damages for which the Association is legally liable or arising out of or connected with the existence or use of any Association Property or any other property required to be maintained by the Association.

Subject to the foregoing, the Declarant may mortgage any or all portions of the Association Property to finance construction and development expenses, provided that the mortgagee recognizes the rights of Owners under this Declaration and neither the Association nor any Owner is personally liable for paying the mortgage. In such event, neither the Association nor the Owners shall be required to join in or be entitled to consent to such mortgage. The Association Property shall be released from any such mortgage no later than the date of conveyance to the Association.

Section 9. Dissolution of Association. The Association shall be dissolved upon the termination of the Declaration, or upon written assent given in writing and signed by not less than eighty percent (80%) of all votes of the Association as are allocated to the Lot Owners. A termination agreement shall be recorded. The Association may be guided by the laws as so established in N.C.G.S. 47F on the termination of the Association. Upon Dissolution or insolvency of the Association, or upon loss of ownership of the Common Areas (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Area as allowed by this Declaration or by reason or merger and/or consolidation with the Common Area as allowed in this Declaration), any portion of the Common Area not under the jurisdiction of Catawba County and being maintained by the Association, shall be offered to an appropriate public agency, or some other appropriate governmental entity or public agency (as determined by the Board), to be dedicated for public use for purposes similar to those to which the Common Area and such assets were required to be devoted as defined by the Association. Neither the public agency nor any other governmental entity needs to accept such conveyance for it to be valid. Once received by such public agency or other governmental entity, such portion of the Common Area and assets shall be conveyed by deed by the Association to said entity, subject to the superior rights of the Owner of each Lot to an easement (if necessary) for reasonable ingress and egress to and from such Owners Lot and the public or private street(s) on which such Lot is located and subject to all other applicable rights-of-way and easements and to ad valorem property taxes subsequent to the date of conveyance. Should said public agency try to refuse the offer of dedication and conveyance, the Association may transfer and convey such Common Area and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most near conform to the purposes and uses to which the Common Area was required to be devoted by this Declaration, such conveyance being made subject to the rights of the Owners and other matters set forth above.

ARTICLE V RIGHTS & OBLIGATIONS OF THE ASSOCIATION

Section 1. Maintenance. The Association shall maintain and keep in good repair the Common Area(s) and the Area(s) of Common Responsibility, the Open Space(s) as designated on the Plat, the Wetlands as designated on the Plat, and the buffer areas as designated on the Plat, and, for this purpose, may levy the Assessment described hereinafter. The Association shall keep the Common Areas and Areas of Common Responsibility as originally improved by the Declarant or as modified with the consent of ACC and shall keep all common facilities in good repair, in a safe, attractive and orderly condition. The roads in the Subdivision are publicly maintained roads. However, in the event the Governing Authority, to whom the obligation of maintaining the roads has been dedicated on the Plat(s), fails to accept the obligation of maintaining said roads, the Association shall assume such obligation.

Section 2. Enforcement. The Association, the Declarant, and any Owner may enforce the provisions of this Declaration by appropriate means, including, but without limitation, the employment of legal counsel and the commencement of legal actions. The Association may promulgate rules for fines against Owners violating the Declaration and/or Rules of the Association in accordance with law. Obligations of the Association are legally enforceable by any Owner and also the Declarant. Failure to enforce any of the covenants, conditions, restrictions, easements or Assessments contained herein does not waive the Association's, Declarant's or Owner's right to insist on compliance in the future. In any action to enforce the provisions of this Declaration, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and court costs.

Section 3. Utilities. The Association may contract, as a Common Expense, for any or all cable or satellite television distribution, Internet, electricity, water, electric services and refuse collection for the Lots or the Common Areas and Areas of Common Responsibility, but has no obligation to do so, where the price savings on a bulk basis is of such a magnitude that it benefits the Membership as a whole.

Section 4. Easements. The Association or Declarant may grant easements when necessary for utilities over the Common Area, and any portion thereof, to serve the Subdivision, and any portion thereof. An easement is hereby granted to the Association and retained by Declarant, without any obligation to do so, for the purposes of accomplishing the repairs, maintenance, replacements or any other work necessary to enforce the provision of this Section.

(a) The Association, Declarant and each Owner shall each have a non-exclusive right and easement of use and enjoyment in and to the Common Areas. Said right and easement shall be appurtenant to and pass with the title to each Lot, and shall include, without limitation, the following:

(i) Right-of-way for ingress and egress by vehicles and on foot through and across any streets or walks in the Common Areas for all lawful purposes; and

(ii) Rights to connect to, maintain and make use of utility systems, wires, pipes, conduits, cable television lines, telephone lines and equipment, sewers and drainage lines, which may from time to time be in or within the vicinity of the Common Areas, but only in accordance with all laws and the requirements of the applicable Governing Authorities or entities that regulate said utilities; and

(iii) Every Owner and family member, guest, lessee, agent or invitee of an Owner shall, except as may otherwise be provided in this Declaration, have a permanent and perpetual, non-exclusive easement for ingress and egress over, enjoyment in, and use of the Common Area within the Property, except as may otherwise be specifically provided elsewhere in this Declaration, in common with all other Owners, their family members, guests, lessees, agents and invitees, located outside another Owner's home, which easement shall be appurtenant to, and shall pass with title to each Owner's Lot. The exercise of these rights and interests shall be subject to and subordinate to the terms and provisions of the Declaration, the Articles, the Bylaws, any recorded Plats, the Rules, rules and regulations, and applicable laws.

(b) Additionally, Declarant hereby reserves and grants the following perpetual, non-exclusive easements over and across the Property as covenants running with the Property for the benefit of the Owners, the Association and Declarant as hereinafter specified for the following purposes:

(i) Utility and Services Easements. All of the Property shall be subject to an easement or easements to provide for: (i) installation, service, repair and maintenance of the equipment required to provide utility services to the Property and the Lots and homes, including, but not limited to, power, lights, telephone, cable television, gas, water, sewer, irrigation and drainage, and (ii) governmental services, including, but not limited to, police, fire, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purposes for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies.

(ii) Easement for Encroachment. All of the Property shall be subject to an easement or easements for encroachment in favor of each Owner in the event any portion of such Owner's home or appurtenant improvements installed by Declarant such as a fence, stucco, underground footer or sidewalk, now or hereafter encroaches upon any of the Lots as a result of minor inaccuracies in survey or construction, by design, or due to settlement or movement. Such encroaching improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of

the encroaching improvements in favor of the Owner thereof or such Owner's designees. Such encroachment will likely constitute a violation of the County's regulations. The County does not expressly or by implication authorize such encroachment. This Section does not limit the County's ability to pursue all available remedies to prevent or remove such encroachments. The County will not permit or allow such encroachments into any easement of land dedicated to or owned by the public for utility, drainage or roadway purposes.

(iii) Easement to Enter upon Lots and Homes. An easement or easements for ingress and egress in favor of the Association, including the Board or the designee of the Board, to enter upon the Lots for the purposes of fulfilling its duties and responsibilities of ownership, maintenance and/or repair in accordance with the Governing Documents, including, by way of example, the making of such repairs, maintenance or reconstruction as are necessary for the Common Area and to maintain any Lot in the event the Owner thereof fails to do so. Furthermore, an easement or easements for ingress and egress in favor of the Declarant, Garden Street Communities Southeast, LLC, the Association and Adams Homes of Northwest Florida, Inc. to enter upon Lots or Common Areas necessary for purposes of construction, repairing or addressing any issues identified by the Governing Authority over the Subdivision within ten (10) years of Plat approval of the Subdivision. The Easement detailed herein creates a right in favor of Grantee(s), but shall in no way be deemed to impose an obligation unto the Grantee(s) for the construction, repairing or addressing of any issues that may materialize.

(iv) Easement for Roof Overhang. An easement or easements, as shown on the Plat and Additional Plat, if any, to provide for the roof overhang of a home in favor of the Owner thereof, including rights of access for persons or equipment necessary to maintain, repair and replace such roof overhang.

(v) Irrigation Easement. An easement for irrigation over, under and upon the Property, including each of the Lots, in favor of the Association and each Owner, including, but not limited to, reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair the irrigation pipes.

(vi) Plat Easement(s). The Plat and/or Additional Plat, if any, may contain additional easements not discussed herein, granted in favor of the Association, Owners or others, for the specific purposes as described therein.

Section 5. Damage to Common Areas and Owner's Maintenance of Lot. In the event the Board of Directors or Officers of the Association determines that any Owner has failed or refused to discharge properly his/her obligations with respect to the maintenance, repair or

replacement of any items for which an Owner is responsible or finds that any Owner, or agent of an Owner or independent contractor of an Owner, is responsible for damage to the Common Area or Area of Common Responsibility, the Association shall give the Owner written notice of the Association's intent to provide the necessary maintenance, repair or replacement at the Owner's sole cost and expense, which notice shall set forth with particularity the maintenance, repairs, and replacement deemed necessary. The Owner shall have fifteen (15) days from the date of mailing the notice by Certified United States Mail to complete the maintenance, repair or replacement or appear before the Board of Directors to contest its determination. If the Owner fails in this obligation, the Association may provide such maintenance, repair and replacement at the Owner's sole cost and expense, and the cost shall be added to and become part of the Assessment for which the Owner is responsible and shall become a lien against the Lot of the Owner enforceable by the Association plus all costs of collection including reasonable attorney fees through appeal. Each Owner hereby grants to the Association an easement for the purposes of accomplishing the repairs, maintenance, replacement or any other work necessary to enforce the provisions of this Section.

Section 6. Enforcement of Duties. Notwithstanding any other provision of this Declaration, the duties of the Association with respect to levying Assessments sufficient to perform its duties and the duty of the Association to provide maintenance of the Common Areas and Areas of Common Responsibility and to enforce the provisions of this Declaration and of its Articles of Incorporation and Bylaws and to enforce any other duties imposed upon it by law or contract are mandatory contractual duties, which shall be specifically enforceable by injunction and by other remedies in legal proceedings, which may be brought by any Owner or by Declarant. Further, in the event Declarant should perform certain of the obligations of the Association, this shall not constitute a waiver with respect to the Association's obligation to perform such duties and with respect to the right of Declarant and Owners to bring legal proceedings to compel the Association to perform its duties and reimburse Declarant for cost expended by Declarant in expending such duties. Furthermore, the Association may not diminish or eliminate any obligation of the Association by an amendment to its Articles of Incorporation or its Bylaws, or by any other method, without Declarant's written consent thereto, so long as Declarant owns any portion of the Property or Additional Property annexed thereto.

Section 7. Fines. In addition to all other remedies, in the sole discretion of the Board of Directors, a fine or fines may be imposed upon an Owner for failure of an Owner, his/her family, guests, invitees, tenants, or contractors to comply with any covenant, restriction, Rule, regulation contained herein, or rules and regulations promulgated under the Articles of Incorporation, Bylaws or by the Board of Directors, provided the following procedures are adhered to:

(a) Notice. The Association shall notify the Owner of the infraction or infractions at least fifteen (15) days prior to a hearing before the Board of Directors. Included in the notice shall be the date and time of the next Board of Directors meeting; at which time, the Owner shall present reasons why fine(s) should not be imposed.

(b) Hearing. The noncompliance shall be presented to the Board of Directors; after which, the Board shall hear reasons why fines should not be imposed. A written decision of the Board of Directors shall be submitted to the Owner not later than twenty-one (21) days after the Board of Director's meeting.

(c) Appeal. Any appeal process provided by North Carolina law shall be available to any offending party.

(d) Fines. The Board of Directors may impose fines at its reasonable discretion, which may exceed any amounts set forth in the Act. The Board may further suspend, for a reasonable time, the rights of the Owner or Owner's guest, tenants or invitees to use Common Areas and recreational facilities. Each day a violation continues to exist, it shall be a separate violation without need for additional notices or appeals. The Association shall be entitled to collect the maximum amount permitted hereunder.

(e) Payment of Fines. Fines shall be paid not later than thirty (30) days after notice of the imposition or Assessment.

(f) Collection of Fines. Fines shall be treated as an Assessment otherwise due to the Association, but no fine shall become a lien against a Lot.

(g) Application. All monies received from fines shall be allocated as directed by the Board of Directors.

(h) Nonexclusive Remedy. These fines shall not be construed to be the exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending Owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner.

Section 8. Special Enforcement Rights. Violation of any conditions or restrictions or breach of any covenant herein contained shall also give the Declarant, its successors and assigns, and/or the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the land on which such violation or breach exists and summarily to abate and remove, at the expense of the Owner of said land, any construction or other violation that may be or exist thereon contrary to the intent and provision hereof; and the Declarant, its successors and assigns and/or the Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal. The Declarant and/or the Association may impose liens upon the Lot of an Owner for amounts incurred for such abatement and removal, which the Owner fails to pay upon written request.

Section 9. Common Areas. There will be Common Areas for use by all residents and their guests. The Association shall be responsible for the ownership, operation and maintenance of said area.

Section 10. Tenant/Rental Approval. Any lease associated with any property or Lot shall be approved by the Association prior to creation of tenancy. The Owner shall submit such lease and any lease or credit application to the Association. Within fifteen (15) days of receipt of such submission, the Association shall have the sole discretion to approve or deny and accepts no liability for such approval or denial.

Section 11. Variances. The Board of Directors shall have the right to grant any variances on any action or proposed action that may conflict with this Declaration, so long as, such is not in violation of application laws. The granting of any such a variance shall be on a case-by-case basis and solely at the discretion of the Board of Directors. Additionally, the granting of a variance by the Board of Directors shall have no bearing whatsoever on any future variance requests.

Section 12. Wall, Fence, and Landscaping. If a wall and/or fence, entry feature and/or gate and landscaping exist around parts of the Subdivision, the Association shall have the responsibility for maintaining this wall, fence, entry feature and/or gate and/or landscaping. As shown on the Plat or separate easement deed, the Association will be granted easements for access to the walls, fences and landscaping for maintenance purposes. On those Lots that border the walls, the Association shall be responsible for repainting and maintaining the wall, and an easement for access for maintenance, replacement, and repair thereto is hereby reserved to the Association for this purpose. As may be required by the County, any landscaping buffer required as shown on the Plat may be installed by the Declarant and maintained and replaced, as needed, by the Association as a Common Expense.

Section 13. MSTU/MSBU. Declarant or the local government may establish a municipal service taxing unit, municipal service benefit unit, or similar mechanism (referred to in this Declaration as "MSTU/MSBU"), which MSTUs/MSBUs will have responsibilities established in their enabling resolutions. By way of example, and not limitation, an MSTU/MSBU may be established to provide for any one (1) or more of the following: (a) operation, management, administration, maintenance, repair, and replacement by the local government of any of the Common Area, and any recreational, drainage or other improvements whatsoever at any time located thereon, for the uses and purposes set forth in this Declaration or in any applicable recorded Plat, which may or may not include a requirement that ownership of the affected lands and improvements be transferred to the local government; (b) construction, maintenance, repair, replacement, or improvement of recreation, drainage, sidewalk, wall, landscaping, open space, conservation, or other areas, improvements or facilities, in, on, under or within the Common Area or any easement areas for the use and benefit of the Property and the occupants thereof; and (c) construction, operation, maintenance, repair and replacement of street lighting or any other service or benefit to or for the Property authorized under the terms of this Declaration, the MSTU/MSBU, or by the applicable Governing Authority. Notwithstanding the foregoing, the Association may elect, from time to time, to aesthetically maintain any property otherwise maintained or to be maintained by the MSTU/MSBU; and if Association does so, no Owner or Member, as a result thereof, shall thereby receive or be entitled to a discount for any ad valorem taxes or Assessments assessed by or in connection with the MSTU/MSBU. If established, each Owner and Member acknowledges and agrees that the costs incurred by the MSTU/MSBU may be billed directly to the Owners or to the Association for subsequent Assessment to the Owners and Lots.

ARTICLE VI RESTRICTIONS UPON INDIVIDUAL USE FOR THE COMMON GOOD

Section 1. Single-Family Residential Use. No building, Structure, or improvement shall be constructed, erected, altered, placed or permitted to remain on any of the Lots within the

Subdivision other than single-family dwellings and appurtenances. As permitted by the Declaration, the Board of Directors may promulgate Rules defining a “single family”, and to prohibit occupancy by certain types of felons, who have not had their civil rights restored, and registered sex offenders.

Section 2. Lawful Use. No part of the Subdivision may be used for any purpose tending to injure its reputation, nor to disturb the neighborhood, nor occupants of adjoining property within the Subdivision, nor to constitute a nuisance, nor in violation of any public law, ordinance or regulation in any way applicable thereto.

Section 3. Commercial Use. None of the Lots shall be used in any way directly or indirectly for any business, commercial, manufacturing, mercantile, storing, vending, or any other purpose incompatible with single-family residential use. No business that generates on site visits by customers, or suppliers shall be allowed. Nothing in this Section shall be construed to restrict Builder’s or Declarant’s use of a model home or sales office.

Section 4. Maintenance. All buildings and other structures within the Subdivision and each portion thereof shall at all times be properly and well maintained in good condition and repair by the Owner thereof. All landscaping of every kind and character, including shrubs, trees, grass and other plants, shall be neatly trimmed, properly cultivated and maintained continuously by the Owner thereof, in a neat and orderly condition and in a manner to enhance its appearance.

Section 5. Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding one (1) week after an Owner or tenant first moves into a home or when permanent window treatments are being cleaned or repaired. No security bars shall be placed on the windows of any home without prior written approval of the ACC. No awnings, canopies or shutters shall be affixed to the exterior of a home without the prior written approval of the ACC. No reflective tinting or mirror finishes on windows shall be permitted unless approved by the ACC.

Section 6. Parceling. No Lot shall be expanded or divided to accommodate more than one (1) dwelling site per full Lot.

Section 7. Design. Any improvements to be constructed onto any Lot will be subject to the written approval of the ACC. The design of said improvements shall be in conformance with the Design Guidelines if and when published (and as may be amended) by the ACC. Upon written request, sent by certified mail by Owner, for approval of plans and specifications, the ACC will have thirty (30) days to approve or disapprove plans. Failure of the ACC to act within thirty (30) days from receipt of definitive plans of the proposed improvement shall result in the plans being deemed approved. ACC will have exclusive control over exterior design, colors and materials, which can be used in new construction and in repainting/refurbishing, modifying or additions of all improvements built on any Property subject to this Declaration and all Additional Property thereto. The Committee may charge a fee to review plans. The fee shall be established by the Association.

Section 8. Roofs; Antennas; Solar Heating. Except as may be allowed by law, no projections of any type shall be placed or permitted to remain above the roof of the building with the exception of one (1) or more chimneys, skylights or vent stacks. No outside television or radio pole or antenna or other electronic device, or solar heating device, shall be constructed, erected or maintained on any building nor on any Property within the Subdivision or connected in such a manner as to be visible from the outside of any building, except as may be allowed by law and approved in writing by the ACC. Over the air reception devices may be installed as allowed by law. The ACC may, in its sole discretion, grant waivers from the provisions of this paragraph.

Section 9. Temporary Buildings and Building Materials.

(a) No shed, tent or temporary Structure/building shall be erected, maintained or used on any Property within the Subdivision without the prior approval of the ACC; provided however, that temporary buildings for use and used for a reasonable time only for purposes incidental to the initial construction of dwellings on any Property may be erected, maintained and used, provided that such erection, maintenance and use has been approved by ACC and provided further that said temporary buildings shall be promptly removed upon the completion of such construction work.

(b) No lumber, brick, stone, cinder block, concrete or other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot, except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction to complete the improvement in which same is to be used.

Section 10. Garages. All residences shall have a minimum of a two (2)-car garage, capable of holding two (2) autos, and Owners may not reduce the size of such garage to any size that would encroach on such dimensions. When garages are not in use by persons, garage doors shall be closed.

Section 11. Signs. No advertising signs or billboards shall be erected on any Lot or displayed to the public on any Lot except a sign of not more than six (6) square feet in area which may be used solely to advertise the Lot for sale or rent, or standard size street number identification signs. All supports for such signs shall be made of wire or 4"x4" posts, and no electrical or mechanical devices may power such signs. This restriction shall not apply to signs used to identify and advertise the Subdivision as a whole, nor signs for selling Lots and/or houses during the development and construction period, provided such signs are approved by the ACC. Signs may not be installed for political purposes, nor to embarrass, harass, or offend any Owner of Lots within the Property. All Builder signage must be approved by the Declarant. This restriction does not apply to a security sign that the Owner may place inside the home or on the outside wall or window of a home.

Section 12. Flags. An Owner may display one portable, removable United States flag in a respectful manner, and one portable, removable official flag in a respectful manner, not larger than 4½ feet by 6 feet, that represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. An Owner may erect a freestanding flagpole no more than 20

feet high on any portion of the Owner's Lot if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The Owner may further display in a respectful manner from that flagpole, one official United States flag, not larger than 4½ feet by 6 feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such additional flag must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the County and all setback and locational criteria contained in this Declaration.

Section 13. Mailboxes.

(a) Community mailboxes may be provided by the United States Postal Service ("USPS") and individual mailboxes on each Lot shall be prohibited while community mailboxes are utilized by the U.S. Post Office. If community mailboxes are not provided, each Owner shall install a U.S. Postal Service-approved mailbox, the color, style and design of which shall be subject to approval by the ACC. All individual mailboxes shall be mounted on a 4" X 4" vertical post with a supporting bracket installed at a 45-degree angle to the post. Except for identifying numbers and letters, the mailbox shall be painted solid black and the post and support shall be painted solid white.

(b) Notwithstanding the foregoing, in connection with the development of the Community, should: (a) the USPS require the use of cluster box units approved by the USPS ("CBUs") for the purpose of centralized mail delivery by the USPS ("Centralized Mail Delivery") to the Community or any part, section, or phase thereof; (b) any other Governing Authority requires the use of CBUs for Centralized Mail Delivery to the Community or any part, section, or phase thereof; or (c) Declarant, in its sole discretion, desires to develop the Community or any part, section, or phase thereof with CBUs for Centralized Mail Delivery, then the Community or the applicable part, section, or phase thereof shall be developed with concrete slabs on, as applicable, Common Area to accommodate the subject CBUs. Unless otherwise undertaken by the USPS from time to time, the Association, as determined necessary by the Board, and, as applicable, at Common Expense, shall be responsible for the routine maintenance, repair, and replacement of the aforementioned concrete slabs and all CBUs, all in accordance with any applicable requirements, rules, policies, and guidelines of the USPS. Notwithstanding the foregoing, neither Declarant nor the Association shall ever be responsible for the safety or security of any CBUs or any mailboxes or parcel compartments contained therein. Each Owner and Member acknowledges and agrees that if at any time their Lot is or becomes serviced by CBUs, all mail delivery to said Lot by the USPS will be done via the mailboxes or parcel compartments contained within the CBUs, as opposed to individual, curbside mailboxes for said Lot.

Section 14. Rubbish. No weeds, rubbish, debris, objects or materials of any kind shall be placed or permitted to accumulate upon any Lot or Common Area within the Subdivision if it renders the property unsanitary, unsightly, offensive or detrimental to any other property in the Subdivision. Trash, garbage, rubbish and other waste shall be kept only in sanitary containers. All

service areas and sanitary containers within the Subdivision shall be enclosed in such a manner that the yards, areas, containers and such are not visible from any neighboring property or street. Sanitary containers and bundled trash may be set out for a reasonable period of time before and after scheduled trash pick-up times.

Section 15. Clotheslines. Clotheslines are not permitted unless they are completely hidden from view of the Common Area, street, and any neighboring property, and except as permitted in writing by ACC.

Section 16. Oil Tanks; Bottle Tanks; Water-Softening Tanks; Wells & Pumps; Condensers; Wood Piles; Central Air Conditioning Units. All ancillary equipment shall be suitably screened so as to be concealed from view of the Common Area, street, and any neighboring property. No window and/or wall air conditioning units shall be permitted. All propane gas tanks larger than standard barbecue size must be buried.

Section 17. New or Damaged Structures. The erection of a new dwelling or Structure, or the repair of any dwelling or Structure damaged by fire or otherwise, on any Lot shall be completed without unreasonable delay. Should the Owner leave a dwelling or Structure in an incomplete condition for a period of more than one hundred twenty (120) days or should the erection of a new dwelling remain incomplete after a period of two hundred seventy (270) days from the date of the first construction related inspection by the appropriate governmental authority, the Association, after reasonable notice to the Owner by registered mail, giving the Owner the opportunity to be heard, may remove the Structure from the premises or complete and repair it in a manner deemed appropriate by the ACC, and/or assess a fine of ONE HUNDRED AND 00/100 DOLLARS (\$100.00) per day for every day the repair or erection of the dwelling or structure remains incomplete after the aforesaid time limits have been reached, unless the Owner can show a defense to ACC that would support an impossibility defense under Florida law, and which delay is approved in writing by the ACC. In either event, the expense so incurred shall be a lien against the Lot enforceable in the same manner as other liens. The dwelling or structure shall not be considered to be complete until, in the opinion of the Board of Directors, both the construction and landscape elements are in compliance with the approved building and landscape plans.

Section 18. Fences, Hedges and Landscaping. All fences, hedges, and landscaping plans must receive prior written approval from ACC before implementation. Fencing of the rear and specified portions of the side yards may be allowed on Lots only upon approval of ACC and shall be set back at least 10 feet from the front of a dwelling unit and shall not encroach upon any utility easement or right-of-way, nor block any drainage swales. Furthermore, any such fencing shall be no more than six (6) feet in height, wood and remain natural in its color. Chain link fences of any type are not permitted. In connection with the development of any Lot for residential purposes the construction of improvements thereon, reasonable care shall be used to preserve and retain as many trees as is reasonably possible. No excavation, fill or clear cutting of trees shall be performed in violation of law, or of this Declaration. The Board of Directors may designate certain individuals with authority to enter upon the property or Lot of an Owner in order to repair and maintain certain items after appropriate notice is given to said Owner and Owner fails to comply. In the event that the Board of Directors takes the action to repair and/or maintain certain items on an Owner's Lot,

said Owner shall be assessed the cost of such repair and/or maintenance plus a fifteen percent (15%) charge associated with the repair and/or maintenance.

Section 19. Electrical Installations. All service lateral entrance installations, or that portion thereof served by said underground electrical distribution system, shall be installed underground and maintained in accordance with the specifications of the appropriate governing entity(ies) for such installation.

Section 20. Common Areas. Nothing herein shall be interpreted as to limit in any way the Declarant's right or Builder's right to use the Common Areas and its related facilities for the sales and promotion of properties.

Section 21. Swimming Pools; Spas; Basketball Backboards; Trampolines. Above ground swimming pools are not permitted. All pools and spas must have the written approval of ACC prior to installation. No basketball backboards, permanent or portable are permitted in any location unless approved in writing by ACC. No trampolines are permitted in any location unless approved in writing by ACC.

Section 22. Hardship Waiver. ACC is authorized, but not required, to grant hardship waivers to Owners in the event in their opinion, the strict application of these restrictions presents a bona fide hardship that is not self-imposed.

Section 23. Minimum Square Footage of Improvements. Any home on any Lot described herein shall contain, at a minimum, 1300 square feet of living area. Living area does not include: garages, porches (open or screened), terraces, or patios.

Section 24. Trailers; Trucks; School Buses; Boats; Boat Trailers. No house trailers, motor homes, mobile homes, school buses, trucks or commercial vehicles, recreational vehicles, off-road vehicles, tandem axle vehicles, motorcycles, campers, habitable motor vehicles of any kind, boats, or boat and other trailers, shall be kept, stored or parked overnight either on any street or on any Lot, except within garages and the garage door closed (if applicable). The foregoing will not be interpreted, construed, or applied to prevent the temporary non recurrent parking of any vehicle, boat or trailer for a period not to exceed forty-eight (48) hours upon any Lot, driveway or street. Notwithstanding the foregoing, passenger automobiles (including SUVs and light trucks without commercial markings) may be parked in driveways. There shall be no major or extended repair or overhaul performed on any vehicle, boats, or trailers on the Lots. All vehicles, boats and trailers shall have current license plates. If any vehicle, boat, or trailer is in violation of this provision, the Association shall have the immediate right to have the offending vehicle, boat, or trailer towed away at the expense of the Owner thereof, and an easement to enter the Lot is reserved in favor of the Association for this purpose. This Section shall be liberally interpreted to permit the Association or any other party having the right to enforce these restrictions to keep the streets within the Subdivision free from congestion and from the parking, repair, or storage of unsightly or oversize vehicles and other rolling stock which may detract from the character of the Subdivision.

Section 25. Vehicles. No vehicle, regardless of whether it would otherwise be permitted to be parked on any Lot or other part of the Property, shall be permitted to be parked on any Lot (unless permanently in a garage) or other part of the Property if such vehicle is not fully functioning and operational, currently registered by the State of North Carolina or another U.S. state, and currently tagged (with a license plate affixed in the proper place(s) on said vehicle) by the State of North Carolina or such other U.S. state in which the vehicle is registered. All vehicles must be parked on surfaces designed for vehicle parking (e.g., parking areas or lots and driveways) and shall not in any event be parked on individual lawns or the grass of any Common Areas. Vehicles shall not be parked in a manner which would block fire hydrants, dumpsters, sidewalks or pedestrian or bicycle paths. No Owner or other occupant of the Community shall repair or restore any vehicle of any kind upon or within the Community, except for: (i) emergency repairs and then only to the extent necessary to enable the movement thereof to a proper repair facility; or (ii) repairs completed within the garage (in which case no garage doors shall be left open overnight or at any other time when the subject vehicle is not actually being worked on or repaired).

Inoperable vehicles (e.g., missing major components such as engines and/or transmissions, one or more flat tires, etc.), or derelict vehicles (e.g., broken glass, severely damaged body panels, unpainted body panels, etc.) may be removed by the Association pursuant to the laws of North Carolina and applicable local laws.

Unless otherwise exempted pursuant to North Carolina law, all powered vehicles capable of exceeding five (5) miles per hour are prohibited from use on Property unless they are licensed, registered, and insured. Specifically, any motorcycle, moped, or motorized scooter used in the Community may only be driven by a licensed driver, and must be registered and insured in accordance with North Carolina law.

No person, firm or corporation shall maintain or repair any vehicle (including, but not limited to, four (4)-wheel passenger automobiles) upon any portion of the Property except within a closed garage and totally isolated from public view; provided however, Declarant its successors, nominees or assigns and the Association may make, or cause to be made, such repairs, if necessary, in regard to vehicles used in connection with construction, sales or management at the Community. Vehicles that are missing one (1) or more wheels, have one (1) or more deflated tires, are not in an operating condition, or do not have current valid license plates shall not remain upon any portion of the Property, except within a wholly enclosed garage fully shielded from view, for more than two (2) consecutive days. No Owner or his or her family members, guests, invitees or lessees or their family members, guests, or invitees shall be permitted to keep any vehicle on the Property that is deemed to be a nuisance by the Association or Declarant.

Section 26. Livestock and Pets. No animals, livestock, poultry, or pets of any kind shall be raised, bred, or kept on any Lot, except that not more than two (2) household pets per Lot may be kept provided that they are not kept, bred, or maintained for any commercial purposes. Only domesticated cats and dogs are allowed as pets; and Pit Bull dogs, Pit Bull mix dogs, and rodents are not considered a domestic pet and are not permitted. All pets must be spayed or neutered and all pets must be up-to-date on rabies shots and other vaccinations. Such household pets must not constitute a nuisance or cause unsanitary conditions. For the purposes of this paragraph, pets shall be deemed to constitute a nuisance if they create excessive or disturbing noises, whether by barking

or otherwise, or if the pet has shown any violent or aggressive behavior or otherwise poses a danger to the health, safety, or welfare of any person. Animals which have attacked or bitten any person or another person's pet shall constitute a nuisance and shall not be kept on any Lot. All pets must be supervised and kept on leashes or within secure enclosures when outdoors. For purposes of this paragraph, invisible electronic fences are not deemed to be fences in compliance herewith. Pet owners are responsible for cleaning up after their pets. The foregoing expression of specific behaviors that shall constitute a nuisance shall in no way limit the determination that other behaviors also constitute a nuisance. Any pet in violation of this section shall be brought into compliance within twenty-four (24) hours of notice by the Association, including but not limited to, the removal of the pet from the Subdivision if the pet has attacked or bitten a person or other person's pet. Maintenance and keeping of pets on the Property and in any residence may be otherwise regulated in any manner, consistent herewith, by the Rules as may from time to time be established by the Board of Directors.

Section 27. Offensive Activities. No noxious, offensive, or illegal activities shall be carried on or upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the Owners of other Lots in the Subdivision. No nuisance shall be caused, or permitted to exist, by any Owner on, about or in the vicinity of his Lot or elsewhere in the Subdivision, nor shall there be any use or practice which is the source of annoyance to residents, or which interferes in any way with the peaceful possession and proper use by the residents of the Subdivision Property or any part thereof. All parts of the Subdivision, including each Lot, shall be kept in a neat, clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed by any Owner or by anyone to accumulate, nor shall any fire hazard be allowed to exist. No improper, offensive, or unlawful use shall be made of any Lot, or any part thereof, and all valid laws, zoning ordinances and regulation of all governmental bodies having jurisdiction thereof, and all regulations of the Subdivision Association, shall be observed.

Section 28. Nuisance. It shall be the responsibility of each Owner to prevent the development of an unclean, unhealthy, unsightly, or unkept condition on their Lot. No Lot shall appear to be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors, noise or other conditions that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of the surrounding property.

Section 29. Drainage. No Owner shall permit any blockage, construction, or landscaping to impede the flow of drainage upon any drainage easement or drainage swale. If a drainage swale is on an Owner's Lot, such Owner is required to maintain any portion of the drainage swale that is on the Owner's Lot. Fences or other Structures shall not be installed in Drainage/Access Easements (whether public or private).

Section 30. Sidewalks. The construction, repair, and replacement of the sidewalks shall be the responsibility of each individual Lot Owner whose Lot adjoins the sidewalk.

Section 31. Builder and Declarant Exemption. Builder and Declarant are exempt from any and all requirements contained in Article VII of this Declaration.

Section 32. Short-Term Rentals. No lease associated with any real property or Lot shall be for a time period of less than twelve (12) months.

Section 33. Use and Protection of Lakes, Ponds, and Conservation Area. The use of all lakes and ponds, if any exist, shall be subject to rules as adopted by the Association, and shall be maintained by the Association.

The Association and the Declarant do not represent or warrant that any Lot is waterfront, that any Lot has lake access, or that the lakes and water levels will continue to exist in their present forms. Neither the Association, Declarant, nor any agent, officer or employee of either shall have any liability to any Owner with regard to the augmentation or continued water levels of any lake.

No Structures shall be placed on any of the lakes or ponds by any Owner and all access to any lake is only permitted through authorized access points created by the Association or other governmental agencies. The Declarant reserves the exclusive right, but not the obligation to install improvements to the Common Area, including but not limited to docks, boardwalks, piers, or boat ramps which may be placed in the Common Area for the use of all Owners and guests.

Section 34. Irrigation. All Lots must have underground irrigation systems in operable condition and may not draw upon water from creeks, streams, lakes, ponds, retention, detention, canals, or other bodies of water within the Subdivision. Individual wells are prohibited.

Section 35. Compliance with Stormwater Management Facilities Requirements. Each Owner within the Subdivision at the time of construction of a building, residence, or Structure shall comply with the construction plans for the Stormwater Management Facilities. No Owner of any real property or Lot within the Subdivision may construct or maintain any building, residence or Structure, or undertake or perform any activity in the wetlands, wetland mitigation areas, buffer areas, upland conservation areas and drainage easements, if any exist, unless prior approval is received from the Governing Authority.

If any exist, the Owners shall not remove native vegetation (including cattails) that becomes established within the Stormwater Management Facilities abutting their property. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp. Owners shall address any questions regarding authorized activities within the Stormwater Management Facilities with the Governing Authority.

The Governing Authority has the right to take enforcement measures, including a civil action for injunction and/or fines against the Association to compel it to correct any outstanding problems with the Stormwater Management Facilities or in mitigation or Conservation Areas under the responsibility or control of the Association.

Any proposed amendment to the Association Documents affecting the facilities (including environmental conservation areas and the water management portions of the Common Areas) must be submitted to the Governing Authority for approval.

The Association shall exist in perpetuity. However, if the Association ceases to exist, and if no maintenance agreement exists with an approved association, then all of the Owners shall be jointly and severally responsible for operation and maintenance of such facilities.

If the Subdivision has on site wetland mitigation which requires ongoing monitoring and maintenance, the Association shall be responsible to carry out this obligation and to complete the task successfully. The Association shall allocate sufficient funds in its budget for such monitoring and maintenance of the wetland mitigation area(s) each year if deemed necessary by the Governing Authority.

Section 36. Lot Setback. No residential dwelling unit shall be constructed on any Lot or building site in the Subdivision, which does not conform to the setback lines shown on the recorded Plat; however, an automatic waiver of ten percent (10%) of any setback requirement on the Plat is hereby granted for violations of any setback requirement not exceeding ten percent (10%). The automatic waiver established by this Section has no effect on any setback requirements imposed by the County's Land Development Code; and appropriate waivers or variances may be required in certain circumstances.

Section 37. Convicted Felon and Registered Sex Offender Restrictions. To the extent permitted by North Carolina law, no person(s) convicted of a federal or state felony or required to register as a sex offender is allowed to reside in the Community. The Board of Directors reserves the right to conduct background checks on all residents. Any resident found to be a convicted felon or required to register as a sex offender will be asked to vacate the Community premises immediately. The Association, the Board of Directors, or any individual Director can be held liable for any damages or losses resulting from the enforcement of this rule and any and all residents of the Community are hereby on notice of this restriction.

ARTICLE VII DESIGN REVIEW

Section 1. Design Approval. No building, structure, architectural feature or improvement, including but not limited to structures, irrigation systems, landscaping, fencing, or hedges, whether for new construction or a modification or addition to existing improvements, shall be erected, constructed, placed or altered on any Lot until the Owner of the Lot shall submit in duplicate, complete plans and specifications for such building, structure, and/or improvement and a detailed site plan showing its proposed location, and the plan specifications and detailed site plan have been approved in writing by ACC. The approval of said plans and specifications may be withheld not only because of noncompliance with any of the specific easements, covenants, conditions, and restrictions of this Declaration, but also by reason of the reasonable dissatisfaction with the landscaping or grading plan, the proposed location of the structure with respect to topography and finished grade elevation, the nature of workmanship and materials, the type or use of materials, the color scheme, finished design, proportions, architecture, style, shape, height, size, style or appropriateness of external design with the existing or proposed buildings, Structures or improvements located or to be located upon the Property, including the heights, kind and appearances of fences, walls, any excavation or fill, change in drainage or terrain, planting, utility installation, and any other physical change or improvement to any Lot, the size, location and

materials to be used in the construction of the walks and driveways, and the sizes and species of landscaping materials, all of which are included within the definition of “improvements” as such word is used herein. One (1) set of plans and specifications and a detailed site plan as finally approved may be retained by the Declarant or ACC.

Upon completion of any buildings, structure or improvement in accordance with approved plans and specifications and detailed site plan, no changes, alterations, additions, reconstruction or attachments of any nature whatsoever shall be made to the exterior of the building, structure and/or improvement or to the Lot, including that portion thereof not actually occupied by the improvements thereon, unless the same are identical to the original work, without prior written approval in the manner above provided.

ACC's approval, disapproval or conditional approval shall be endorsed upon the plans and specifications submitted by the Owner, and shall be further evidenced by a written instrument executed and acknowledged by ACC. Such written instrument shall be returned to the Owner.

ACC shall not obviate any reviews or approvals required by government and does not constitute a structural review or review for compliance with building codes or any purpose other than design compatibility with the community, surrounding structures and terrain.

ACC shall have the authority to publish “Design Guidelines” that shall outline guidelines for the design of improvements to be constructed on the Lots. ACC reserves the right to amend these Design Guidelines from time to time.

Section 2. Exculpation of Declarant and ACC. Declarant and/or ACC cannot and shall not be held responsible for any loss or damages to any person arising out of the approval or disapproval of plans, designs or construction errors. Nor shall the Declarant and/or ACC be held responsible for loss or damages to any person arising out of noncompliance with governmental land use and building regulations. The Declarant and/or ACC also shall not be held responsible for any structural fault in design or construction. Neither the Association, ACC, Declarant, or any agent, officer or employee of the Association, ACC, or Declarant shall be liable to any Owner or other for any damages or costs arising in any way out of the approval or disapproval of any plans or applications.

Section 3. Design Approval by Declarant. The Declarant reserves the right to maintain exclusive architectural control for new construction in all Common Areas, entrance and recreation areas. The purpose of architectural control is to assure that improvements in the Subdivision as a whole will preserve a uniformly high standard of construction that is attractive and harmonious. The basic architectural control for regulation of all Lots is vested in ACC. In addition, to further protect, conserve and enhance the aesthetics of the community, the Declarant itself, until the last Lot is sold, may regulate the appearance of all Common Area improvements and buildings, and structures if any. The power to regulate vested in the Declarant temporarily and ACC permanently shall include the power to prohibit those improvements, structures, buildings found to be (a) inconsistent with the provisions of this Declaration, or the aesthetic design or quality intended to be created and preserved hereby, or (b) contrary to the best interests of the Subdivision or (c)

detrimental to the value and desirability of the Subdivision as a residential community with exclusive, unique and desirable qualities.

Section 4. Builder Exemption. Builder shall be exempt from any and all requirements of this Article VIII.

Section 5. Variance. The Declarant shall have the power and authority, in its sole discretion, to grant variances in compliance with the Declaration provided, however, that such variances shall be reasonable consistent with the purpose of the Declaration and shall not materially and adversely affect existing improvements. Whenever, in the exercise of its discretion, Declarant grants a variance, each Lot Owner hereby acknowledges that such variance shall constitute a waiver of any conflicting provisions of the Declaration. Each Lot Owner appoints Declarant as its true and lawful attorney-in-fact for the limited purpose of consenting to and granting variances. Automatic ten percent (10%) setback variance.

Section 6. Declarant's Right to Appoint. The Declarant shall have the right: to sit on and/or appoint the ACC, to remove without cause any person serving on ACC, and to fill any vacancies on ACC, until such time as all Class "B" Membership terminates. After termination of Class "B" Membership, Declarant may elect one (1) member to ACC so long as Declarant owns property in the Subdivision. Any person appointed to ACC by Declarant does not have to be a Member and shall only be removed by Declarant unless otherwise allowed under this Declaration. The ACC shall consist of not less than two (2) nor more than five (5) members. In the absence of a formally appointed committee, the Officers of the Association shall constitute the Architectural Control Committee.

ARTICLE VIII

LOT OWNERS' ASSESSMENTS

Section 1. Purpose. Assessments for Common Expenses provided for herein shall be used for the general purpose of promoting recreation, safety, health, value, and common benefit and enjoyment of the Owners. These general purposes include, but are not limited to, maintaining Areas of Common Responsibility, Common Areas, the roads (if privately maintained), and expenses of general operation of the Association in the fashion that may be specifically authorized from time to time by the Board of Directors.

Section 2. Assessment Lot. For the purpose of establishing and determining Assessments for Common Expenses payable by the Members, Assessment Lots are hereby established as follows:

- (a) Each Lot with a Structure thereon shall be one (1) Assessment Lot.
- (b) Each Lot, without a Structure, shall be one-fourth (1/4) of an Assessment Lot.

Section 3. Determination of Assessments for Common Expenses and Establishing a Budget. Not less than thirty (30) days prior to the beginning of each fiscal year, the Board shall adopt a budget for such fiscal year, which shall estimate all of the Common Expenses to be incurred by the Association during the fiscal year and covering the estimated cost of operating the

Association during the coming year. In determining the budget for any fiscal year, the Board may take into account expenses, Area of Common Responsibility, Common Areas, Lots, and other additional obligations anticipated to be added during the fiscal year, if any. The budget may include a capital contribution or reserve in accordance with the current year's budget. The Board shall then establish the Assessment for Common Expenses, which shall be equal to the total amount to be assessed for Common Expenses pursuant to the budget, divided by the total number of Assessment Lots within the Subdivision. The Association shall then promptly notify all Members, in writing, of the amount, frequency, and due dates of the Assessment for Common Expenses per Assessment Lot or fraction thereof at least twenty (20) days prior to the meeting of the Board at which the budget is adopted. The budget and Assessment shall become effective unless if either disapproved at the annual meeting, by a vote of at least fifty-one percent (51%) of the Association's Members, or without a majority vote of the Board. In the event the Board fails to adopt a budget and Assessment as provided herein, the Assessments for the current year shall be continued in full force and effect for the succeeding year.

From time to time during the fiscal year, the Board may modify the budget for the fiscal year. When needed, the Board may amend the budget during a fiscal year and increase the amount of the Assessments by ten percent (10%) without approval of the Members if it appears that there will be insufficient income to meet the obligations of the Association. If the increase of the Assessments exceeds ten percent (10%), the Board may make special Assessments for Common Expenses, which shall be levied in the same manner as hereinbefore provided for regular Assessments for Common Expenses and shall be payable in the manner determined by the Board as stated in the notice of any special Assessment for Common Expenses. In the event any Assessments for Common Expenses are made payable in equal periodic payments as provided in the notice, such periodic payments shall automatically continue to be due and payable in the same amount and frequency as indicated in the notice. Notwithstanding the foregoing, in no event shall any Assessment for Common Expenses payable by any Member be due less than ten (10) days from the date of the notification, of such Assessment.

Section 4. Transfer of Ownership Fee. Commencing upon the transfer of title of any Lot(s) from a seller, other than Declarant or Builder, such transfer shall require purchaser of such Lot(s) to pay Association TWO HUNDRED AND 00/100 DOLLARS (\$200.00) per Lot transfer fee.

Section 5. Creation of Lien and Personal Obligation. Each Owner of any Lot by acceptance of a deed whether or not it is expressed in the deed, covenants and agrees to pay to the Association:

- (a) Assessments for Common Expenses;
 - (b) Special Assessments to be established and collected as hereinafter provided;
- and
- (c) Specific Assessments. Any and all accrued, liquidated indebtedness of any Owner to the Association arising under any provision of this Declaration, or by contract, express or implied, or because of any act or omission of any Owner or person for whose

conduct such Owner is legally responsible, interest at the highest rate allowed by applicable law, also may be assessed by the Association against such Owner's Lot after such Owner fails to pay such indebtedness within thirty (30) days after written demand. This shall include fines levied for the actions of any Owner, or guest, invitee, or family member of such Owner.

All Assessments and costs of collection for delinquent assessments along with interest on delinquent assessments, administrative fee for collection, and reasonable attorney fees shall be a continuing lien upon the Lot against which the Assessment is made. Each Assessment together with interest, administrative fee, and a reasonable attorney fee shall also be the personal obligation of each person who is the Owner of the Lot at the time the Assessment is levied. Each Owner shall be liable for his or her portion of each Assessment and his or her grantee shall be jointly and severally liable for any portion that may be due at the time of conveyance. Assessments shall be paid in the manner and upon the date specified by the Board of Directors and unless otherwise provided by the Board, shall be paid in monthly installments or in one (1) annual payment. Each Lot shall be assessed equally for annual Assessments and special Assessments.

Section 6. Special Assessments. In addition to the annual Assessments for Common Expenses authorized above, the Board may levy in an assessment year, a Special Assessment for unanticipated expenses not included within the budget and not reserves, as long as the Declarant is exercising its rights under the provisions hereof, not to pay assessments. Meetings for special purpose of considering Special Assessments shall be held only after due notice to the Owners mailed not less than thirty (30) days prior to the date of the meeting.

Section 7. Liens or Assessments. All sums assessed against any Lot pursuant to this Declaration together with interest as provided herein shall be secured by a continuing lien upon such Lot in favor of the Association. The lien shall be superior to all other liens and encumbrances on the Lot, and shall relate back to the recording of this Declaration and shall be superior to any homestead rights, except for liens of ad valorem taxes and mortgages held by institutionalized lenders. Persons other than recognized lending institutions acquiring interests other than first mortgages liens or encumbrances on any Lot after this Declaration shall have been recorded in the public records shall be deemed to consent to the liens and assessments of the Association and the subsequent liens shall be inferior to future liens for assessments of the Association whether or not prior consent be specifically set forth in the instrument creating such liens or encumbrances.

Section 8. Remedies of the Association to Enforce Assessments. Any Assessments that are not paid when due shall be delinquent. Any Assessment delinquent for a period of more than ten (10) days shall incur an administrative charge for collection in the amount the Board of Directors may determine from time to time. If the Assessment has not been paid within thirty (30) days, the assessment liens shall commence to include interest on the principal amount at the maximum rate per annum allowed by law from the date first due and payable, plus an administrative charge or late fee as allowed by law, and costs for collection, including a reasonable attorney's fee and all costs through any appeal. In the event that the Assessment remains unpaid after sixty (60) days, the Association may commence legal action to collect the Assessments or to foreclose its lien. Each Owner by his or her acceptance of a deed to a Lot, vests in the Association or its agents the right and power to bring all actions against it personally for the collection of such

charges as a debt or to foreclose the aforesaid lien in the same manner as liens for mortgages on real Property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all Owners.

Section 9. Date of Commencement of Annual Assessments and Deficit Funding.

(a) Annual Assessments shall commence upon conveyance of the Lot to an Owner, other than Declarant or Builder. The annual Assessment shall be payable in the manner and on the schedule the Board of Directors may provide, and if not stated in the budget, shall be on the first of the month, and begin to accrue late fees and interest if not paid within fifteen (15) days after the due date.

(b) Notwithstanding anything herein to the contrary, as long as Class "B" Membership exists, Declarant and/or Builder may elect not to pay any Assessment as to any Lot owned by it during any period of time that Declarant pays the Common Expense actually incurred over and above the income derived from the Assessments collectible from the Class "A" Members ("Deficit Fund"). For purposes of this subsidy arrangement, unless expressly required by applicable law, Declarant and/or Builder need not subsidize or pay any Assessment amounts levied for replacement reserves or capital expenditures. If Declarant and/or Builder elects to Deficit Fund as permitted herein and under the Act, then for purposes of complying with North Carolina law, the amount of the Annual Assessments, as such Annual Assessments may be increased per fiscal year, shall be the maximum obligation of the Class "A" Members. If Declarant and/or Builder elects to Deficit Fund, then for purposes of complying with North Carolina law, the amount above the Annual Assessments that is necessary to keep the Association operational shall be the amount of Declarant's/Builder's guarantee of Common Expenses. It is the express intent of Declarant that this be an establishment of a guarantee pursuant to North Carolina law. Unless Declarant and/or Builder otherwise notifies the Board in writing at least thirty (30) days before the beginning of a fiscal year, Declarant and/or Builder shall continue paying on the same basis as during the previous fiscal year. Declarant and/or Builder, at its option, may elect by written notice delivered to the Association at any time to abandon the subsidy approach and commence payment of the Assessments thereafter falling due for the Lots then owned by Declarant or Builder, prorated as of the date that such notice is delivered to the Association. Notwithstanding the foregoing, Declarant and/or Builder shall never be obligated to pay any Individual Assessment or Start-Up Assessment.

Section 10. Exempt Property. The Assessments, charges and liens created under this Article IX shall not apply to the Common Areas nor shall the Assessments apply to land or easements dedicated to and accepted by local public authority or any land used by a utility company.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Run with the Land. This Declaration is to run with the land and shall be binding on all parties and persons claiming under it for a period of thirty (30) years from the date

it is recorded after which time it shall be extended automatically for successive periods of ten (10) years, unless an instrument signed by two-thirds (2/3) of the Owners of the Lots agree to change the covenants in whole or in part and is recorded.

Section 2. Amendments. The covenants and restrictions of this Declaration may be amended by an instrument signed by the Board of Directors with an attached certification that the Amendments have been approved by the required voting percentage at a properly noticed meeting of the Association, where the required quorum was present in person or by proxy or with an attached joinder signed by Owners, Declarant, and/or Builder with the required voting interest to approve such Amendment.

This Declaration may be amended by a majority vote of those eligible to vote at a properly noticed meeting where a quorum is present. A quorum shall be twenty percent (20%) of the total voting interest of the Association. An Owner must be current on all its assessments and financial accounting to be eligible to vote.

The Declarant retains the right to amend the Declaration until the sale of the last Lot to comply with any governmental requirement or request, or to correct errors, or any requirement by an institutional lender which commits to make mortgage loans for homes in the Subdivision, without the consent of the Owners, during the period of time before control of the Association is required to be turned over to the Owners. Such Amendment by the Declarant shall not prejudice the Owners or diminish the property rights of Owners, nor shall they transfer any of the Declarant's obligations to the Association or to the Owners. Until such time as the last Lot that the Declarant holds for sale in the ordinary course of business is conveyed by the Declarant, it specifically reserves for itself, its successors and assigns, the absolute and unconditional right to amend, alter, modify, change, revoke, rescind, or cancel any or all of the restrictive covenants contained in this Declaration or hereinafter included in any subsequent Declaration; provided, however, no such Amendment, alteration, modification, revocation, rescission, or cancellation shall prejudice or otherwise impair the security, rights and priorities of any mortgagee of record as to any of the Lots. All or any portion of the Properties may be removed from the lien and operation of this Declaration by an amendment executed by the Declarant for such purposes, provided there are no conveyances of Lots or residential units constructed upon the Property being removed from the lien and operation of this Declaration. Notwithstanding any other provision in this Declaration, the Articles or Bylaws to the contrary, the Board shall have the power to unilaterally amend this Declaration to bring any provisions herein into compliance with any governmental or quasi-governmental statute, rule, regulation, or requirement, or judicial ruling. To the extent legally required, each Owner shall be deemed to have granted to the Association an irrevocable power of attorney, coupled with an interest, for this purpose.

Section 3. Indemnification of ACC & Committee Members. **ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS EVERY OFFICER, DIRECTOR AND OWNER ON THE ACC AND ALL OTHER COMMITTEE MEMBERS (COLLECTIVELY, THE "ACC AND COMMITTEE MEMBERS"), AGAINST ANY AND ALL EXPENSES, INCLUDING ATTORNEYS' FEES, INCURRED BY OR IMPOSED UPON ANY ACC AND**

COMMITTEE MEMBERS, IN CONNECTION WITH ANY ACTION, SUIT OR OTHER PROCEEDING (INCLUDING SETTLEMENT OF ANY SUIT OR PROCEEDING IF APPROVED BY THE BOARD OF DIRECTORS) TO WHICH HE/SHE MAY BE MADE A PARTY BY REASON OF BEING OR HAVING BEEN AN ACC AND COMMITTEE MEMBER, AT THE TIME THE EXPENSES ARE INCURRED, UNLESS LIABILITY IS DETERMINED TO BE THE RESULT OF HIS/HER OWN INDIVIDUAL WILLFUL MISCONDUCT, GROSS NEGLIGENCE OR NONFEASANCE. ANY RIGHT TO INDEMNIFICATION PROVIDED FOR HEREIN, SHALL NOT BE EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH ACC AND COMMITTEE MEMBERS, OR FORMER ACC AND COMMITTEE MEMBERS, MAY BE ENTITLED. ASSOCIATION MAY, AS A COMMON EXPENSE, MAINTAIN ADEQUATE GENERAL LIABILITY AND OFFICERS' AND DIRECTORS' LIABILITY INSURANCE TO FUND THIS OBLIGATION.

Section 4. Indemnification of Declarant. EACH AND EVERY LOT OWNER AND FUTURE LOT OWNER, IN ACCEPTING A DEED OR CONTRACT FOR ANY LOT SUBJECT TO THESE DECLARATIONS, AGREES TO INDEMNIFY AND HOLD HARMLESS DECLARANT FOR ANY DAMAGE CAUSED BY OWNER, OR THE CONTRACTOR, AGENT, OR EMPLOYEES OF OWNER, TO ROADS, STREETS, GUTTERS, WALKWAYS, OR OTHER ASPECTS OF PUBLIC WAYS, INCLUDING ALL SURFACING THEREON, OR TO WATER, DRAINAGE, STORM SEWER LINES, OR SANITARY SEWER LINES. ADDITIONALLY, LOT OWNER(S) SHALL INDEMNIFY AND HOLD HARMLESS DECLARANT FROM SUITS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSE IN CONNECTION WITH LOSS OF LIFE, BODILY OR PERSONAL INJURY, PROPERTY DAMAGE, OR ANY OTHER DAMAGE ARISING FROM OR OUT OF ANY OCCURRENCE IN, UPON, AT, OR FROM LAKES, PONDS, WETLANDS, OR OTHER BODIES OF WATER AS SHOWN ON THE PLAT, OR ANY PART THEREOF, OR OCCASIONED WHOLLY OR IN PART BY ANY ACT OR OMISSION OF LOT OWNER(S), LOT OWNERS' AGENT(S), CONTRACTOR(S), EMPLOYEE(S), INVITEE(S), OR LICENSEE(S).

FURTHERMORE, THE ASSOCIATION AGREES TO INDEMNIFY AND HOLD HARMLESS DECLARANT FROM ANY AND ALL LIABILITY ARISING OUT OF ACCIDENTAL DEATH OR INJURY OCCURRING ON ANY COMMON AREA, CONSERVATION EASEMENT, AMENITY,

PRESERVATION LAND, AREA OF COMMON RESPONSIBILITY, RECREATION FACILITY OR PARK, OR IN/ON ANY OTHER AREA OWNED OR UNDER CONTROL OF THE HOA, INCLUDING ALL COSTS AND ATTORNEYS' FEES RESULTING FROM OR ARISING OUT OF AN ACCIDENTAL DEATH OR INJURY.

Section 5. Eminent Domain. In the event of a threatened taking of a Common Area, the Association shall have a power to take all action with respect to such taking. The Board may act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of taking of less than all the Common Areas, the rules as to restoration, replacement of any Common Area and the improvement thereon shall apply as in the case of destruction of improvements upon the Common Area.

Section 6. Insurance. The Association shall obtain, to the extent reasonably available and at a reasonable cost, insurance it deems necessary which may include, but not limited to, the following policies of insurance:

(a) fire and extended coverage insurance on all improvements upon the Common Areas and Areas of Common Responsibility in the amount of one hundred percent (100%) of the full insurance replacement cost value of the improvements, or as determined by the Board;

(b) general comprehensive public liability insurance against liability to and claims of the public, an Owner of the Association and any other person with respect to liability occurring upon the Common Areas or the Areas of Common Responsibility based upon or arising out of the Association's Ownership or use of the Common Area or Areas of Common Responsibility. The minimum combined single limits of liability shall not be less than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) per occurrence and ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) in the aggregate. The liability insurance shall name, as separately protected insured, the Declarant, the Association, the Board, ACC (if economically feasible) and their respective Owners, employees, officers, agents and representatives.

The Association shall furnish the insurance contemplated and any judgement by the Association as to the amount and type of insurance shall be reasonable and shall be made after due deliberation in good faith and based on institutionalized lender's loan guidelines.

Section 7. Contracts with Declarant or Third Parties. The Association and Declarant are authorized to enter into mutual contracts for any services the Declarant is capable of providing to the Association. The contract shall be an arm's length transaction subject to such terms and conditions as the parties may agree. Any third-party contract must be capable of being terminated with thirty (30)-days' notice. Agreements with any Association management company shall clearly state any estoppel fees due to the management company for a change of title of a Lot.

Section 8. Headings. It is further declared that the headings or titles inserted in the Declaration and any subsequent Amendments are inserted solely for the convenience of reference and shall not constitute a part of this Declaration nor shall they affect its meaning, construction or effect.

Section 9. Traffic. Traffic in any of the streets and roads or ways in the Subdivision shall be subject to the provisions of the laws of the State of North Carolina concerning operation of motor vehicles on public streets. The traffic laws shall operate as restrictive covenants and shall be enforceable by the powers of the Association, as well as applicable Law Enforcement Agencies, including the right to collect reasonable fines for violation thereof. Reasonable speed limits may be designated by the Board of Directors of the Association and shall be posted in the Subdivision. Only drivers licensed to operate or recognized by the State of North Carolina may operate any type of motor vehicle or golf cart on the streets of the Subdivision. The Association is empowered to pass, administer and enforce reasonable rules and regulations for control of traffic and safety. Automobiles and trucks with noisy exhaust systems or excessive emissions shall not be operated in the Subdivision. There shall be no racing whatsoever on the streets. All vehicles parked or driven in the Subdivision shall have a current registration tag on the vehicle. Neither go-carts, motorized scooters nor three (3) and four (4) wheel all-terrain vehicles shall be operated within the Subdivision. All vehicles of every kind and nature which are allowed on the streets of the Subdivision, shall be operated in a careful and quiet manner, and with consideration for all Owners of the community, and in a manner to be expected from a reasonable, prudent person. Vehicles may only be operated in areas designated by the Association for vehicle operation.

WHERE PERMITTED BY LOCAL LAW ENFORCEMENT AGENCIES AND MUNICIPAL GOVERNMENT, THE DECLARANT MAY ELECT TO INSTALL ENTRY/EXIT GATES OR SUCH OTHER TRAFFIC CONTROL DEVICES UPON THE STREETS AS IT MAY, IN ITS SOLE DISCRETION DETERMINE TO BE IN THE BEST INTERESTS OF THE ASSOCIATION AND ITS MEMBERS. THE ASSOCIATION SHALL PAY FOR THE COST OF MAINTENANCE AND REPAIR OF SUCH DEVICES AS PART OF ITS BUDGET PROCESS, AND SUCH DEVICES SHALL NOT BE AN INTERFERENCE WITH ANY EASEMENT HEREUNDER.

Section 10. Perpetual Easement. Notwithstanding any provisions of this Declaration or any Amendments thereto, no easements in the Common Area for ingress and egress may be terminated, said easement's being intended to be perpetual; this will apply regardless of the termination of the restrictive covenants contained in this Declaration and regardless of the termination of the Declaration itself. Furthermore, notwithstanding the termination of this Declaration, the Association's power to make assessments and its duties to maintain the Common Areas and Areas of Common Responsibility shall survive the termination of this Declaration unless the instrument of termination specifically provides otherwise.

Section 11. Supplemental Declarations and Additions to Existing Property. Declarant, by its sole and absolute discretion, may file such Supplemental Declarations as it deems appropriate from time to time, and the same will be amended from time to time as additional phases

of the Subdivision are developed, without the necessity of any joinder by the Association or by any Owners in the Subdivision; there is reserved in the Declarant the unrestricted right to grant easements in all roads and Common Areas throughout the Property to all Owners of Lots in the Subdivision (including phases to be developed by use of a supplemental declaration). The right of the Declarant to extend all of the benefits of easements, as development proceeds in phases, to all Owners of Lots in the Subdivision, over roads and over other Common Areas throughout the existing properties and future additions thereto is absolute and may be exercised at any time and from time to time without the joinder and without the consent of the Association or of any Owner or mortgagee whomsoever. It is likewise intended that notwithstanding any other provision of the Declaration, neither the Association's consent nor that of its Owners shall be necessary for Declarant to grant utility easements to public utility companies and to governmental units, so long as the easements are over Common Areas, Areas of Common Responsibility or over portions of Lots then owned by the Declarant.

As additional phases are developed, they shall be Additional Property within the jurisdiction of the Association entitled to the easements granted herein and subject to the restrictions and Assessments set out herein. The additions shall be made by filing of record – one (1) or more Supplemental Declarations with respect to the properties to be subject to this Declaration. A new supplementary filing shall extend the jurisdiction of the Association and the undivided interest in the Common Areas and Areas of Common Responsibility to the Additional Property owners and thereby shall subject the Additional Property to Common Area easements and Assessments for its just share of the Association's expenses. Each Supplemental Declaration may contain complementary additions and modifications of this Declaration to reflect the different character, if any, of the added properties; provided however, such Supplemental Declaration shall not revoke or otherwise amend this Declaration as it applies to the existing Property.

Section 12. Declarant's Rights. The provisions of this Declaration shall not be applicable to prevent or hinder the activities of Declarant or Builder in developing, marketing, and operating the community. Additionally, and notwithstanding any other provision of this Declaration, Declarant and its designees or Builder may employ such methods of marketing including signage, parking facilities for models, and operation of sales and construction offices, as deemed appropriate in Declarant's or Builder's sole discretion, and for ingress and egress over the Common Area for this purpose.

Section 13. Declarant and Builder Reservation. Any provision of this Declaration to the contrary notwithstanding, until Declarant has completed all of the contemplated improvements and the Lots have been sold to Third Party Purchasers, neither the Owners nor the Association shall interfere with, or allow the interference with, the completion of Declarant's planned improvements and the sale of the Lots. Declarant may make such lawful use of the unsold Lots and the Common Areas, without charge, as may facilitate such completion and sale, including, but not limited to, maintenance of sales and construction trailers and offices, the showing of the Lots and the display of signs and the use of Lots for vehicular parking. Without limiting the generality of the foregoing, except only when the express provisions of this Declaration prohibit Declarant from taking a particular action, nothing in this Declaration shall be understood or construed to prevent or prohibit Declarant from any of the following:

(a) Doing on any property or Lot owned or controlled by it, whatever it determines to be necessary, convenient or advisable in connection with the completion of the development of the Property, including without limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development (all models or sketches showing plans for future development of the Property, as same may be expanded, may be modified by Declarant at any time and from time to time, without notice); or

(b) Erecting, constructing and maintaining on any property or Lot owned or controlled by Declarant, such structures as may be reasonably necessary for the conduct of its business of completing said development and establishing the Property as a community and disposing of the same by sale, lease or otherwise; or

(c) Conducting on any property or Lot owned or controlled by Declarant, its business of developing, subdividing, grading and constructing improvements on the Property and of disposing of Lots therein by sale, lease or otherwise; or

(d) Determining in its sole discretion the nature of any type of improvements to be initially constructed as part of the Development or the Property; or

(e) Maintaining such sign or signs on any property or Lot owned or controlled by Declarant as may be necessary or desired in connection with the operation of any Lots owned by Declarant or the sale, lease, marketing or operation of the Lots; or

(f) Recording Supplemental Declarations that modify or amend this Declaration, which add or withdraw Additional Property, or that otherwise allow or permit Declarant to affect any action which may be required of Declarant by the local government or any other Governing Authority or quasi-governmental agency in connection with the development and continuing operation of the Property; or

(g) Modifying, changing, re-configuring, removing or otherwise altering any improvements located on the Common Areas or utilizing all or portions of the Common Areas for construction access or staging (provided that same does not impair existing platted access (as shown on any recorded Plats) or utility services to the Lots); or

(h) Causing utilities to be available to all portions of the Property, including, but not limited to, the reserving or granting of easements and rights of way as may be necessary to locate, install and maintain facilities and connections.

Section 14. Covenants Running with the Land. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING AND WITHOUT LIMITING THE GENERALITY (AND SUBJECT TO THE LIMITATIONS) OF OTHER APPLICABLE SECTIONS HEREOF, IT IS THE INTENTION OF ALL PARTIES AFFECTED HEREBY AND THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS THAT

THESE COVENANTS AND RESTRICTIONS SHALL RUN WITH THE LAND AND WITH TITLE TO THE PROPERTY. WITHOUT LIMITING THE GENERALITY OF ANY OTHER SECTION HEREOF, IF ANY PROVISION OR APPLICATION OF THIS DECLARATION WOULD PREVENT THIS DECLARATION FROM RUNNING WITH THE LAND AS AFORESAID, SUCH PROVISION AND/OR APPLICATION SHALL BE JUDICIALLY MODIFIED, IF AT ALL POSSIBLE, TO COME AS CLOSE AS POSSIBLE TO THE INTENT OF SUCH PROVISION OR APPLICATION AND THEN BE ENFORCED IN A MANNER WHICH WILL ALLOW THESE COVENANTS AND RESTRICTIONS TO SO RUN WITH THE LAND; BUT IF SUCH PROVISION AND/OR APPLICATION CANNOT BE SO MODIFIED, SUCH PROVISION AND/OR APPLICATION SHALL BE UNENFORCEABLE AND CONSIDERED NULL AND VOID IN ORDER THAT THE PARAMOUNT GOAL OF THE PARTIES AFFECTED HEREBY (THAT THESE COVENANTS AND RESTRICTIONS RUN WITH THE LAND AS AFORESAID) BE ACHIEVED.

Section 15. Notices, Disclaimers and Indemnification as to Water Bodies, Preserves, Golf Courses and Sinkholes. **NEITHER DECLARANT, BUILDER, NOR THE ASSOCIATION, THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS, OR SUBCONTRACTORS (COLLECTIVELY, THE “INDEMNIFIED PARTIES”) SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN THE COMMUNITY, EXCEPT (i) AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED WITH, AN APPLICABLE GOVERNMENTAL OR QUASI GOVERNMENTAL AGENCY OR AUTHORITY OR (ii) TO THE EXTENT OTHER EXPRESSLY APPLICABLE SECTIONS HEREOF WOULD OTHERWISE APPLY, IF AT ALL. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE COMMUNITY LOCATED ADJACENT TO, OR HAVING A VIEW OF ANY OF, THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF PROPERTY, TO HAVE AGREED TO INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF WATER IN SUCH BODIES. REGARDLESS OF ANY PRECEPTION OR VERBAL COMMUNICATION PURPORTING TO REPRESENT THE ADJACENT**

LAND MAY NOT BE DEVELOPED, INDEMNIFIED PARTIES DISCLAIM ANY SUCH PERCEPTION OR COMMUNICATION EXISTS.

ALL PERSONS ARE HEREBY NOTIFIED: FROM TIME TO TIME, ALLIGATORS AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN THE COMMUNITY AND MAY POSE A THREAT TO PERSONS, PETS, AND PROPERTY. THE INDEMNIFIED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

ALL PERSONS ARE HEREBY NOTIFIED: FROM TIME TO TIME, SINKHOLES MAY OCCUR IN THE COMMUNITY AND LOTS THEREIN. INDEMNIFIED PARTIES SHALL NOT BE LIABLE OR RESPONSIBLE FOR DAMAGES CAUSED BY ANY SINKHOLE.

ALL PERSONS ARE HEREBY NOTIFIED: FROM TIME TO TIME, GOLF BALLS MAY CAUSE DAMAGE TO LOT OWNERS' DWELLING AND/OR PERSONAL PROPERTY. INDEMNIFIED PARTIES SHALL NOT BE LIABLE OR RESPONSIBLE FOR DAMAGES CAUSED BY GOLF BALLS.

Section 17. Attorneys' Fees. In the event of any dispute arising out of the terms of this Declaration, whether or not a lawsuit, arbitration, or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs (including those incurred in any related appeals, post judgement collection proceedings, or bankruptcy proceedings), including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of the recoverable attorneys' fees and costs. The reasonable costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, including but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

Section 18. Severability. If any provision of this Declaration is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Declaration will not be affected or impaired.

Section 19. Waiver of Jury Trial. The Association and all Owners agree to waive trial by jury in respect of any dispute and any action on dispute. This waiver is knowingly, willingly, and voluntarily made by both parties, and both parties hereby represent that no representations of fact or opinion have been made by any person or entity to induce this waiver of trial by jury or to

in any way modify or nullify its effect. This provision is a material inducement for the parties entering into this Declaration.

Section 20. Conflicts. If there is any conflict between this Declaration, Bylaws, and/or Articles of Incorporation for the Association, this Declaration shall govern.

Section 21. Disclaimer of Representations or Warranties. **EXCEPT AS EXPRESSLY PROVIDED IN THIS DECLARATION, NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, HAS BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF. IF ANY SUCH WARRANTY CANNOT BE DISCLAIMED, AND AS TO ANY CLAIMS WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.**

ARTICLE X DISCLAIMER OF LIABILITY OF ASSOCIATION

Section 1. Disclaimer of Liability. Notwithstanding anything contained herein or in the Association Documents neither the Association, Builder, nor the Declarant nor any officer or employee thereof shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Subdivision including, without limitation, residents and their families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:

(a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof;

(b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of North Carolina, Harnett County and /or any other jurisdiction or the preventions of illegal activity;

(c) any provisions of the Association Documents setting forth the uses of assessments which are related to health, safety, security and/or welfare shall be interpreted and applied only as limitations of the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety, security or welfare of any person(s), even if assessment funds are chosen to be used for any such reason;

Each Owner (by virtue of Owner's acceptance of title to their Lot) and each other person or entity having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such uses) shall be bound by this Article XI and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this Article XI.

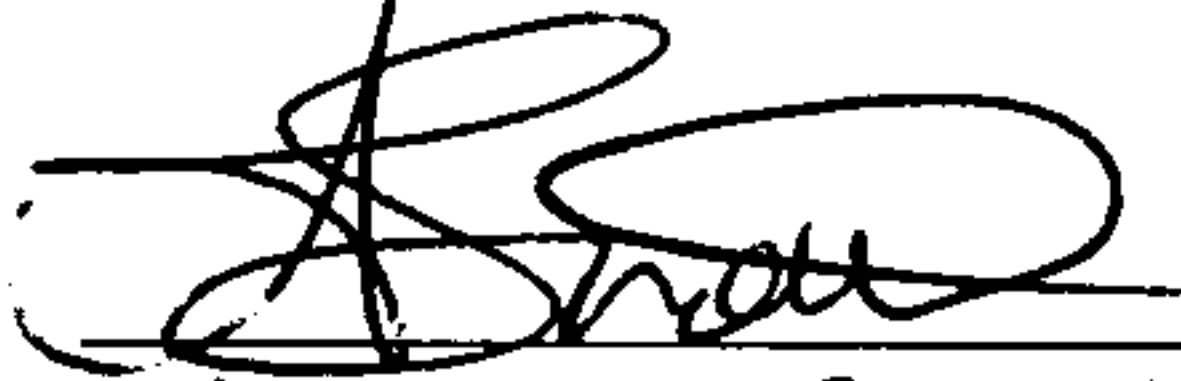
The Common Areas and easements contain wetlands, roads and water areas which may present hazards to persons and which may contain wildlife and other organisms of danger to children and other persons. All Owners, on behalf of themselves, their families, guests, and invitees, hereby agree that the Association shall have no liability for any activities undertaken by any person on Association lands or Common Areas and easements which result in injury from such natural elements. All Owners, families, invitees and guests agree that any person using such lands does so at his own risk. All Owners shall undertake to warn others of such hazards when appropriate.

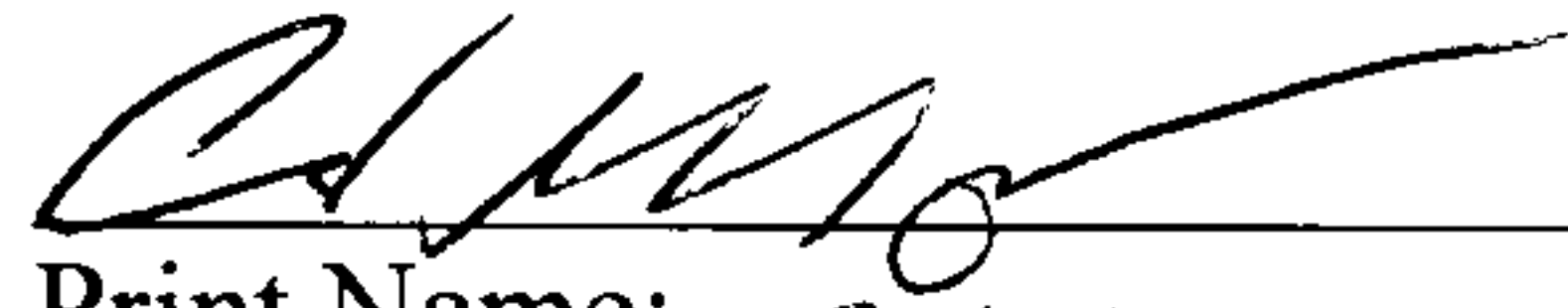
As used in Article XI, "Association" shall include within its meaning all of the Association's Directors, Officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors and assigns. The provisions of this Article XI shall also inure to the benefit of the Declarant and Builder, which shall be fully protected hereby.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned, Declarant herein, hereby executes this instrument by and through its duly authorized representative and under seal on the date set forth below.

**Executed and declared
in the presence of:**


Print Name: AMANDA SNOW


Print Name: CHAD MONTGOMERY

**GARDEN STREET COMMUNITIES
SOUTHEAST, LLC**, a Florida limited
liability company f/k/a Esplanade
Communities of Florida, LLC.

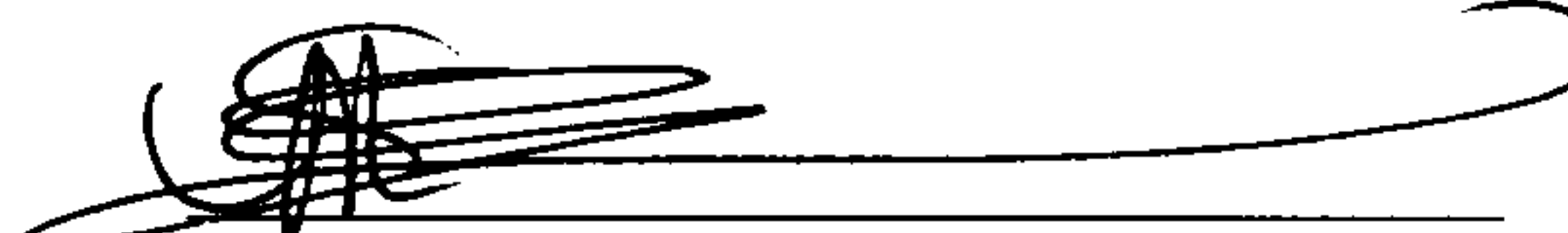
By: 
William Bryan Adams, Manager

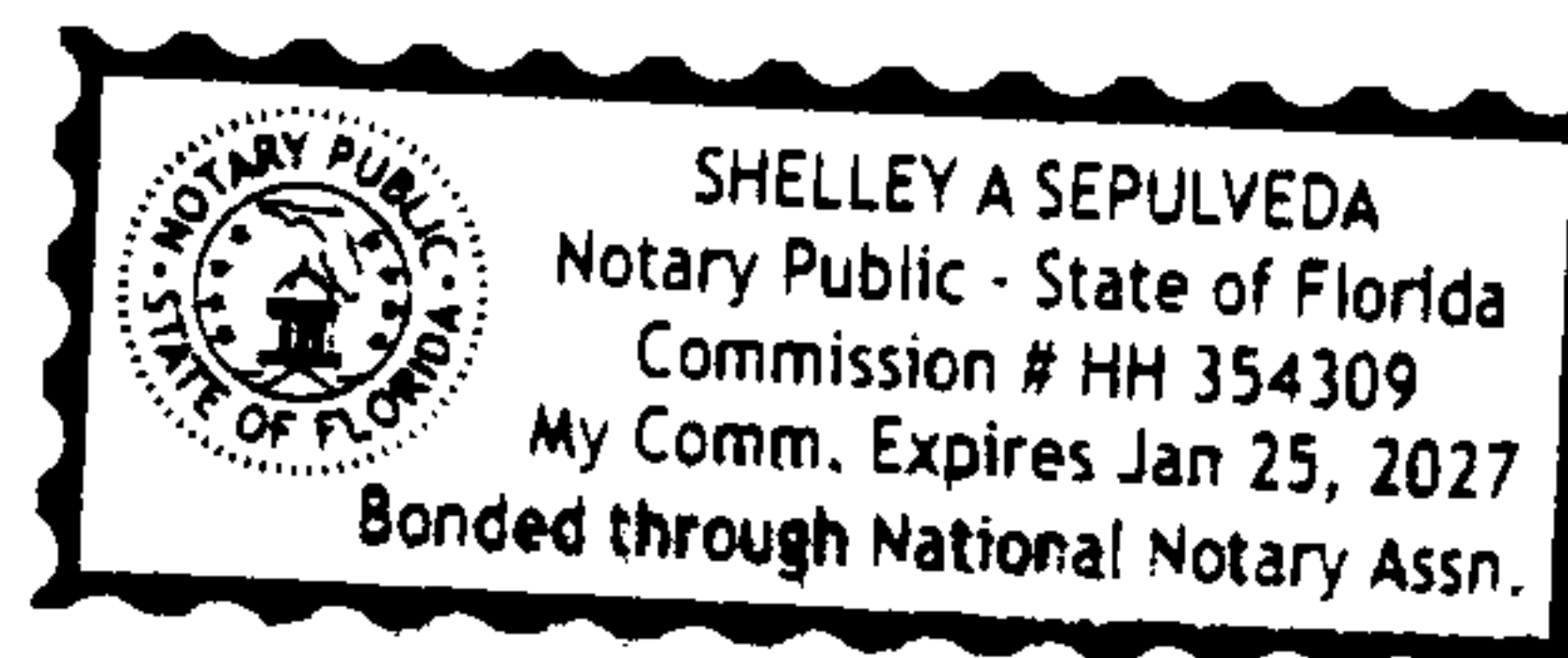
**STATE OF FLORIDA
COUNTY OF ESCAMBIA**

I, a Notary Public in and for the above-named State and County, do hereby certify that William Bryan Adams, Manager of **GARDEN STREET COMMUNITIES SOUTHEAST, LLC**, a Florida limited liability company f/k/a Esplanade Communities of Florida, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed on behalf of the company.

Witness my hand and official seal, this the 29 day of May, 2024.

(NOTARY SEAL)


Notary Public
My Commission Expires: 1.25.27



Exhibits:

- A – Legal Description
- B – Bylaws
- C – Articles of Incorporation

**JOINDER
OF
THE PRESERVE AT KIPLING CREEK
HOMEOWNERS ASSOCIATION, INC.**

THE PRESERVE AT KIPLING CREEK HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation ("HOA"), hereby consents to and joins in this Declaration of Covenants, Conditions, Restrictions, Easements, and Assessments for The Preserve at Kipling Creek (the "Declaration") for the purposes of declaring and agreeing that the Property described in the Plat(s) of The Preserve at Kipling Creek, recorded in the Public Records of Harnett County, North Carolina, shall remain subject to all the terms, conditions, covenants and restrictions set forth in the Declaration.

This joinder shall be binding upon the parties hereto and their respective successors and assigns.

Signed, Sealed and Delivered

**THE PRESERVE AT KIPLING
CREEK HOMEOWNERS
ASSOCIATION, INC.**, a North
Carolina nonprofit corporation

In our presence as witnesses:

Valerie Hamlin

Print Name: Valerie Hamlin

Amanda Allen

Print Name: Amanda Allen

BY: Shirley Macy G.M.

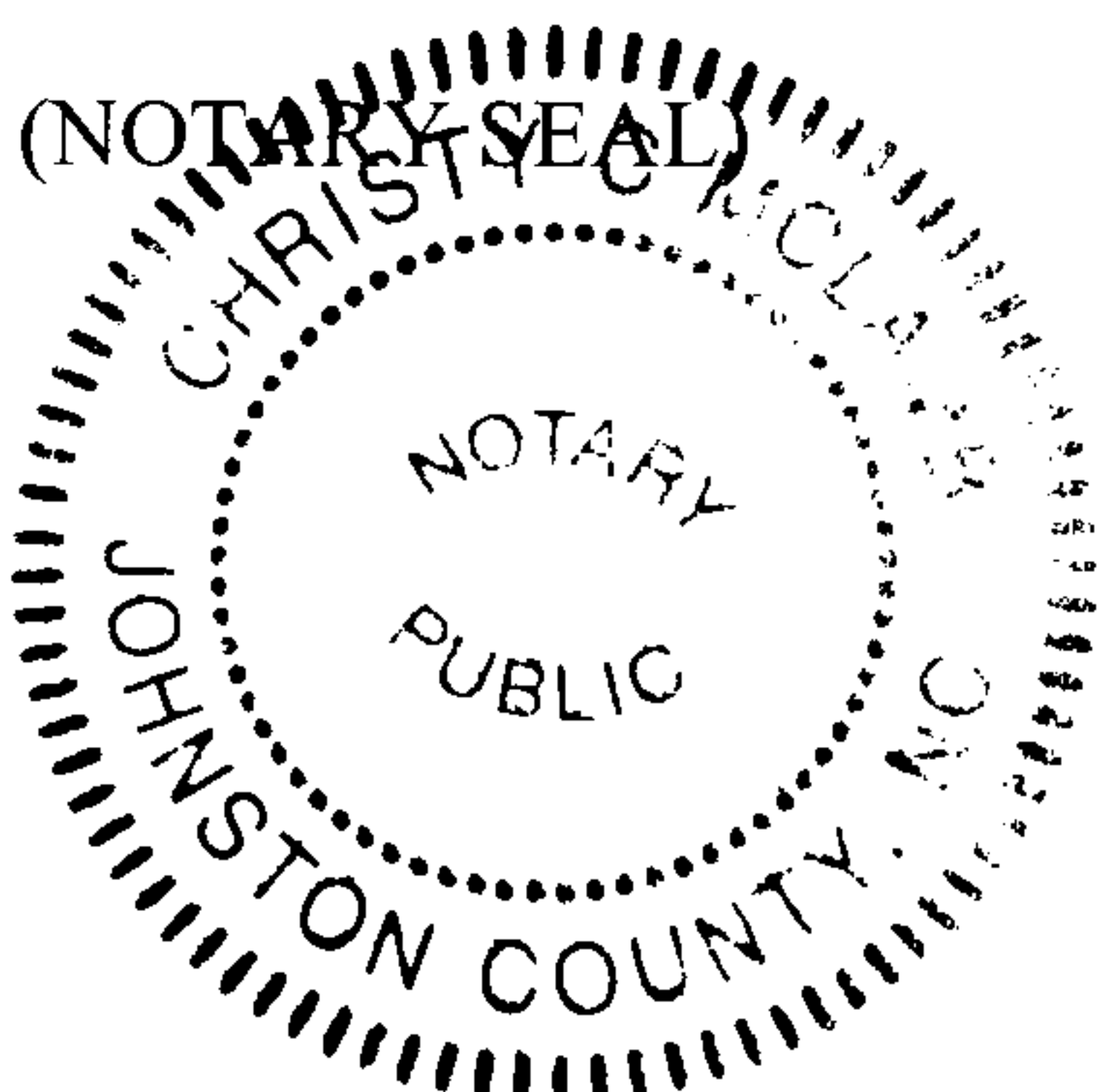
Print Name: Shirley Macy

Title: President

Date: 6-4-24

**STATE OF NORTH CAROLINA
COUNTY OF Wake**

The foregoing instrument was acknowledged before me this 4th day of June, 2024 by Shirley Macy as President of **THE PRESERVE AT KIPLING CREEK HOMEOWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, who ☒ is personally known to me or ☐ has provided _____ as identification.



[Signature]
Notary Public
My commission expires: 5-7-29

EXHIBIT A
Legal Description
[See Attached]

Metes & Bound Description For Kipling Subdivision

BEGINNING AT A POINT IN THE SOUTHWEST CORNER OF THE SARAH L. BLANCHARD AND MARY H. HELEN PROPERTY (PIN# 0652-52-3437), POINT HAVING NORTH CAROLINA GRID COORDINATES (N-622,424.93' E-2,055,223.43'). SAID POINT BEING AN SET IRON REBAR AND BEING THE POINT AND PLACE OF **BEGINNING**. THENCE FROM SAID POINT S 86°58'47" E 324.29 FEET TO AN SET IRON REBAR. THENCE FROM SAID POINT S 02°04'32" E 45.18 FEET TO AN EXISTING IRON PIPE. THENCE FROM SAID POINT S 42°40'34" E 1978.70 FEET TO AN EXISTING IRON PIPE. THENCE FROM SAID POINT S 22°17'52" E 67.95 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT N 82°28'34" E 92.34 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 19°20'11" W 228.16 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT N 88°40'59" E 81.18 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 24°36'32" W 165.23 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 87°26'10" W 38.61 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 53°07'48" W 43.18 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 27°57'03" W 31.94 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 69°40'37" E 66.31 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 18°26'06" E 29.13 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 51°17'36" W 98.91 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT N 88°16'33" W 172.23 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 13°10'59" W 65.64 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 61°27'36" E 74.71 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 33°55'47" E 38.16 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 50°24'21" W 87.79 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 13°17'44" E 89.28 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 30°47'03" W 83.74 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT N 76°12'02" W 89.84 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 28°29'26" W 92.16 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 69°18'29" W 137.98 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 61°09'28" W 65.15 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT N 89°52'09" W 57.75 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 47°46'40" W 85.04 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 24°29'30" W 232.70 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 20°47'03" W 215.69 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT S 20°36'18" W 262.31 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT N 52°14'00" W 1312.12 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT N 20°50'56" E 43.28 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT CURVING LEFT ALONG THE RIGHT OF WAY OF NORFOLK SOUTHERN RAILROAD N 07°32'23" W 873.08 FEET AND HAVING A RADIUS OF 1008.46' TO A SET IRON REBAR. THENCE FROM SAID POINT N 31°24'40" W 969.79 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT N 58°34'58" E 625.73 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT N 57°45'34" E 147.11 FEET TO A SET IRON REBAR. THENCE FROM SAID POINT CURVING LEFT ALONG THE RIGHT OF WAY OF BALLARD ROAD N 47°14'37" E 223.54 FEET AND HAVING A RADIUS OF 535.29' TO A SET IRON REBAR. THENCE FROM SAID POINT CURVING LEFT ALONG THE RIGHT OF WAY OF BALLARD ROAD N 23°13'09" E 211.11 FEET AND HAVING A RADIUS OF 629.61' TO A SET IRON REBAR. THENCE FROM SAID POINT N 16°44'08" E 9.05 FEET TO A SET IRON REBAR AND BEING THE POINT AND PLACE OF **BEGINNING**, AND CONTAINING 4,656,822 SQUARE FEET AND 106.90 ACRES.

EXHIBIT B
Bylaws
[See Attached]

**BYLAWS OF
THE PRESERVE AT KIPLING CREEK HOMEOWNERS ASSOCIATION, INC.,
A NORTH CAROLINA NON-PROFIT CORPORATION**

**ARTICLE I
NAME**

Section 1.1 The name of the corporation is **THE PRESERVE AT KIPLING CREEK HOMEOWNERS ASSOCIATION, INC.**, a North Carolina non-profit corporation (hereinafter referred to as the "Association"). The principal office of the Association shall be located at 149 us Highway 70 West, Suite 149, Garner, North Carolina 27529, but meeting of members of the Board of Directors may be held at such places within the State of North Carolina as may be designated by the Board of Directors.

**ARTICLE II
DEFINITIONS**

Section 2.1 For ease of reference, these Bylaws shall be referred to as the "Bylaws". The terms used in these Bylaws shall have the same definition as those set forth in the **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, AND ASSESSMENT FOR THE PRESERVE AT KIPLING CREEK**, to be recorded in the Public Records of Harnett County, North Carolina, unless herein provided to the contrary, or unless the context otherwise requires.

**ARTICLE III
MEETING OF MEMBERS**

Section 3.1 Annual Meetings. The annual meeting of the Members shall be held on a date, time and at a place to be determined by the Board with due and proper notice thereof as provided in Section 3.3 hereof.

Section 3.2 Special Meeting. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of a majority of the Members of each class.

Section 3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days in advance of such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.4 Quorum. The presence at the meeting of Members of each class entitled to cast votes, or of proxies entitled to cast votes, equal to twenty percent (20%) of each class, shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at the meeting, the Members of each class entitled to vote shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

Section 3.5 Proxies. At all meetings of Members of each class, each Member of each class may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 3.6 Vote Required. At every meeting of the Members, the Owner(s) of each Lot, either in person or by proxy, shall have the right to cast the number of votes to which he or she is entitled as set forth in the Declaration. The vote of the majority of the votes cast by those present of each class, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the Declaration, the Articles of Incorporation, or these Bylaws, a different vote is required, in which case such express provisions shall govern and control.

Section 3.7 Order of Business. The order of business at all annual or special meetings of the Members of each class shall be as follows:

- A. Roll Call
- B. Proof of Notice of meeting or waiver of notice
- C. Reading of minutes of previous meeting
- D. Reports of officers
- E. Reports of committees
- F. Election of officers or directors (if election to be held)
- G. Unfinished business
- H. New business
- I. Adjournment

ARTICLE IV

BOARD OF DIRECTORS: SELECTION - TERM OF OFFICE

Section 4.1 Number. The affairs of this Association shall be managed and governed by a Board of Directors composed of not less than three (3) members. The first Board of Directors shall have three (3) members.

Section 4.2 Classes. Each director will be appointed or elected to one (1) of three (3) classes: Class 1, Class 2, or Class 3. Directors will be elected by class to provide for staggered terms. This Section 4.2 shall not apply to Article IV, Section 4.7

Section 4.3 Term of Office. Each member of the Board shall serve for a term of two (2) years until the next annual meeting, or until such time as his successor is chosen. The eligibility of a member to be elected for more than one (1) term shall not be abridged, excluding the initial terms as explained as follows: the initial term for Class 1 director will be for one (1) year, the initial term for the Class 2 director will be for two (2) years, and the initial term for the Class 3 director will be for three (3) years.

Section 4.4 Removal. Any director may be removed from the Board with or without cause, by a majority of each class of the Members of the Association entitled to vote. In the event of death, resignation or removal of a director, his or her successor shall be selected by the remaining members of the Board of Directors and he or she shall serve for the unexpired term of his or her predecessor. This Section 4.4 shall not apply to Board of Directors appointed by Declarant. Only Declarant shall have the right to remove a Board of Director appointed by Declarant.

Section 4.5 Compensation. No director shall receive compensation for any service she/he may render to the Association. However, any director may be reimbursed for his/her actual expenses incurred in performance of his/her duties.

Section 4.6 Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Section 4.7 The First Board of Directors. The first Board of Directors shall consist of three (3) persons who shall be appointed by the Declarant and who, subject to the provisions set forth hereinabove with regard to resignation and death, shall be the sole voting members of the Board of Directors of the Association and shall hold office until the termination of Class B Membership as set forth in the Declaration.

ARTICLE V ELECTION OF DIRECTORS

Section 5.1 Elections to the Board of Directors (other than the members that may be chosen by Declarant) shall be by secret written ballot. At such election, the members or their proxies may cast, in respect to each such vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving a majority of the votes cast for that office shall be elected. Cumulative voting is not permitted.

ARTICLE VI MEETING OF DIRECTORS

Section 6.1 Regular Meetings. Regular meetings of the Board of Directors shall be held annually, at such place and hour as may be fixed from time to time by resolution of the Board and shall give at least ten (10)-days' notice of said meeting by any usual means of communication.

Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 6.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3)-days' notice to each director.

Section 6.3 Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 7.1 Powers. The Board of Directors shall have the power to:

A. Adopt and publish rules and regulations governing the use of the Common Area and Areas of Common Responsibility as well as the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

B. Suspend the voting rights and right to use of the Common Area or Areas of Common Responsibility by a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such right to use of the Common Area or Areas of Common Responsibility may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

C. Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

D. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

E. Employ a manager, management company, an independent contractor and/or such other employees as the Board deems necessary and to prescribe the duties to be undertaken and the compensation therefor, and authorize the purchase of necessary supplies and equipment and to enter into contracts with regard to the foregoing items or services;

F. Accept such other functions or duties with respect to the property hereunder, including Architectural Control, in addition to maintenance responsibilities, as are determined from time to time to be proper by the majority of the Board of Directors;

G. Delegate to and contract with a financial institution for collection of the Assessments of the Association;

H. To procure and maintain adequate liability insurance on property owned by the Association, and such other insurance which in the opinion of a majority of the Directors may be necessary or desirable for the Association, the policies and limits to be reviewed at least annually and increased and decreased at the discretion of the majority of the members of the Board of Directors;

I. To cause the Common Area, Areas of Common Responsibility, and those portions of lots and dwellings to be maintained in accordance with the Declaration;

J. To prepare and file the appropriate governmental tax returns and in compliance with Revenue Ruling 70-604, the corporation elects to apply excess assessments to help reduce future years assessments. Therefore, no tax is due on the excess payment.

Section 7.2 Duties. It shall be the duty of the Board of Directors:

A. To cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members of each class, or at any special meeting when such statement is requirement in writing by fifty-one percent (51%) of each class;

B. To supervise all Officers, agents and employees of the Association and to see that their duties are property performed;

C. To fix the amount of the annual Assessment against each Lot and to send written notice of each Assessment to every Owner subject thereto and in relation thereto, to establish the Annual Budget as provided in the Declaration described hereinabove;

D. To foreclose the lien against any property for which Assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same, at the election of the Board of Directors;

E. To issue or cause to be issued by an appropriate Officer, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

F. To fix and determine the amount(s) of special Assessments for capital improvements as set forth in the Declaration, to send written notice of each special Assessment to every Owner subject thereto at least thirty (30) days in advance of the due date thereof, and to collect or cause to be collected such sum or sums as are deemed to be due by virtue of said special Assessment.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 8.1 Enumeration of Officers. The officers of this Association shall be a president, secretary, and treasurer who shall at all times be members of the Board of Directors.

Section 8.2 Election of Officers. The election of Officers shall take place at the meeting of the Board of Directors, which shall immediately follow the adjournment of each annual meeting of Members.

Section 8.3 Term. The Officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless said member shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 8.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine in its discretion.

Section 8.5 Standing Committees. The Board shall appoint such standing committees as are required under the Declaration, the Articles, or these Bylaws, as well as such other committees as are necessary or desirable from time to time, which committees shall exist for such periods of time, have such authority, and perform such duties as the Board may, from time to time, determine in its discretion.

Section 8.6 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.7 Vacancies. A vacancy in any office may be filled by appointment by a majority vote of the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he/she replaces.

Section 8.8 Duties. The duties of the Officers are as follows:

A. President: The President shall preside at all meetings of the Board of Directors; see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

B. Secretary: The Secretary may act in the place and stead of the President in the event of his/her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him/her by the Board of Directors. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal;

serve notice of meetings of the Board of Directors and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as may be required by the Board of Directors.

C. Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association along with the President; keep proper books of account; cause a financial report of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members.

ARTICLE IX COMMITTEES

Section 9.1 The Board of Directors may, at its discretion, create such committees as it sees fit from time to time.

ARTICLE X BOOKS AND RECORDS

Section 10.1 The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation, and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, or such other address as the Board of Directors may from time to time designate, and copies may be purchased at a reasonable cost at such address.

ARTICLE XI ASSESSMENTS

Section 11.1 As more fully provided in the Declaration, except as therein provided, each Member of each class is obligated to pay to the Association annual and special Assessments and reserves which are secured by a continuing lien upon the property against which the Assessment is made and are a personal obligation of the Member of each class.

ARTICLE XII CORPORATE SEAL

Section 12.1 The Association may have a seal in circular form, having within its circumference the words: THE PRESERVE AT KIPLING CREEK HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation.

ARTICLE XIII AMENDMENTS

Section 13.1 Requirements to Amend. These Bylaws may be amended at a regular or special meeting of the Members by a vote of fifty-one percent (51%) of each class of the Members present in person or by proxy except as otherwise provided in the Declaration.

Section 13.2 Control of Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control, and in the case of any conflict between the Declaration, the Articles of Incorporation, and/or these Bylaws, the Declaration shall control.

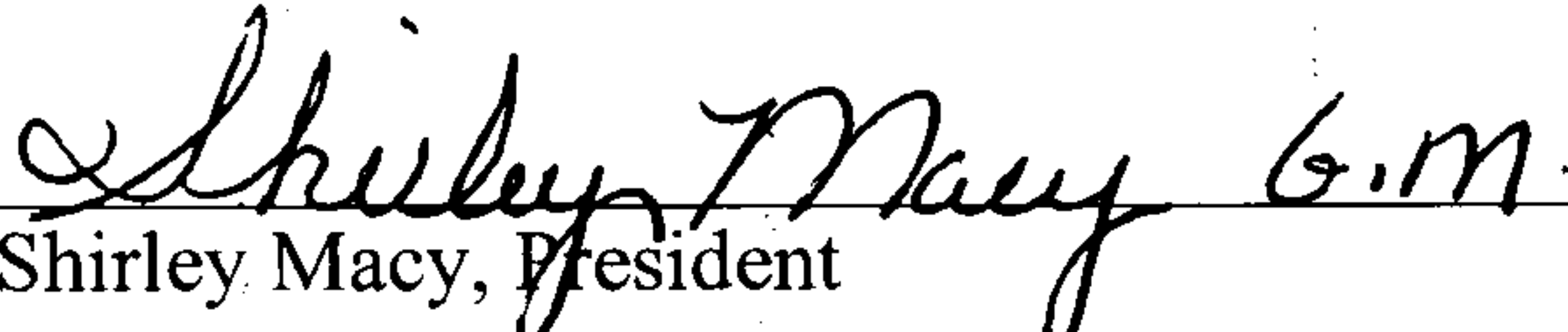
ARTICLE XIV MISCELLANEOUS

Section 14.1 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of each year, except that the first fiscal year shall begin on the date of incorporation of the Association.

Section 14.2 Indemnification. The Association shall indemnify any Officer, director, employee, agents or any former officer or director to the full extent permitted by law. However, the Association shall not indemnify or agree to indemnify a person against liability or expenses the person may incur on account of his/her activities, which were at the time taken, known, or believed by the person to be clearly in conflict with the best interests of the Association or if the person received an improper personal benefit. Any person having rights under this Section shall recover from the Association reasonable costs, expense, and attorneys' fees in connection with the enforcements of the rights to indemnification granted herein. The right to indemnification granted herein shall be in addition to and separate and apart from the indemnification provided for in North Carolina General Statutes 55A-8-52, 55A-8-54, 55A-8-55, and 55A-8-56.

Section 14.3 Insurance. The Board of Directors may, but is not required to, elect to carry a policy of officers and directors' liability insurance, insuring the Officers and directors against any claims made against them whatsoever, except claims of willful negligence and misfeasance of office.

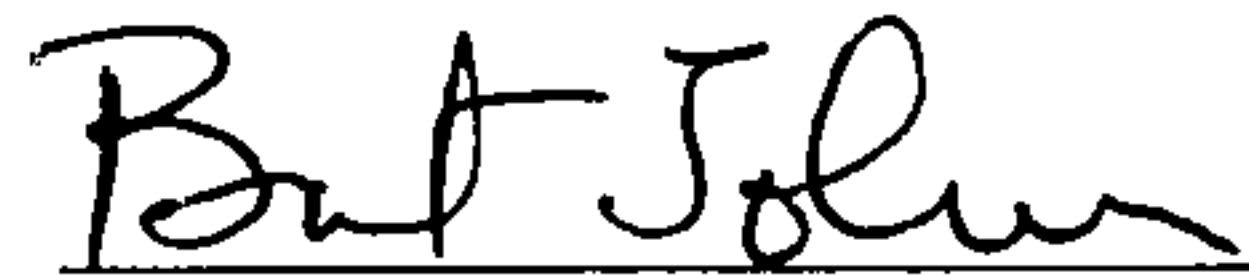
IN WITNESS WHEREOF, we, the directors of **THE PRESERVE AT KIPLING CREEK HOMEOWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, have hereunto set our hands this 28th day of May, 2024 for and on behalf of the Association.


Shirley Macy, President

CERTIFICATION

I, the undersigned, do hereby certify that I am duly elected and acting Secretary of **THE PRESERVE AT KIPLING CREEK HOMEOWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, and that the foregoing Bylaws constitute the original Bylaws of the said Association, as duly adopted at the meeting of the Board of Directors thereof, held on this 28th day of May, 2024.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Association this 28th day of May, 2024.



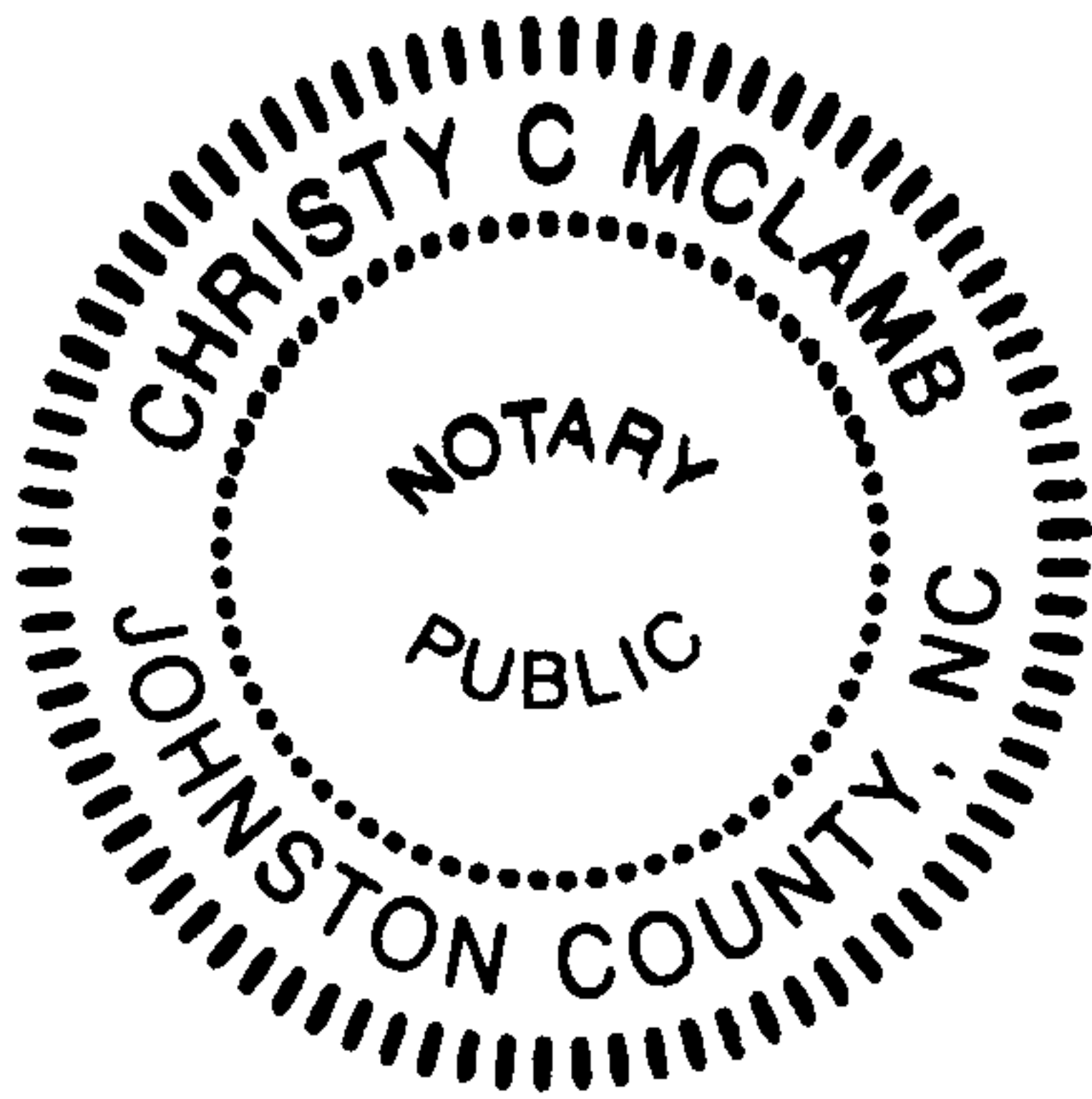
Brint Johnson, Secretary

NORTH CAROLINA NOTARY ACKNOWLEDGMENT

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Christy C. McLamb, Notary Public, do hereby certify that Shirley Macy, President and Brint Johnson, Secretary of THE PRESERVE AT KIPLING CREEK HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, personally appeared before me and I acknowledged the execution of the foregoing instrument this, the 28th day of May, 2024.



A handwritten signature in black ink, appearing to read "Christy C. McLamb", written over a horizontal line.

Christy C. McLamb, Notary Public

My commission expires: 5/7/29