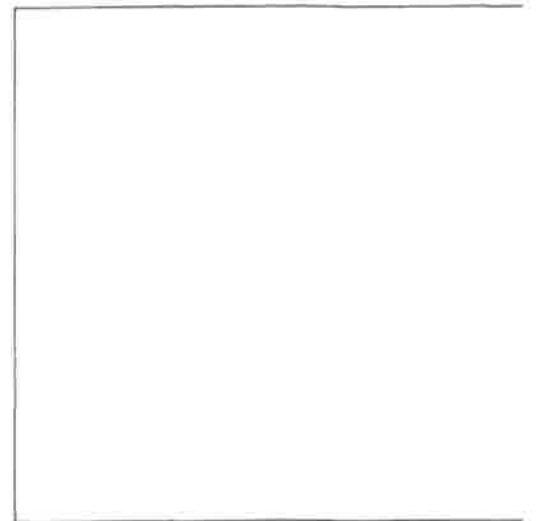


PREPARED BY AND RETURN TO:

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**DECLARATION
OF
COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, AND ASSESSMENTS
FOR
SOUTHERN ESTATES**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, AND ASSESSMENTS ("Declaration") is made on this ____ day of _____, 2023, by Garden Street Communities Southeast, LLC, f/k/a Esplanade Communities of Florida, LLC ("Declarant"), and its successors, assigns, and designees:

WHEREAS, Declarant is the sole owner and developer of the Property, which is more specifically described on Exhibit "A";

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

WHEREAS, Declarant intends to subdivide the Property into a subdivision named **SOUTHERN ESTATES**;

WHEREAS, Declarant has caused the incorporation of **SOUTHERN ESTATES HOMEOWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, for purposes of enforcing this Declaration and exercising the functions described herein; and

NOW THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to this Declaration as well 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 real property set forth above, or any part thereof or part added hereto, 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:

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

“Additional Plat” shall mean the plat of any Additional Property; provided, a Supplemental Declaration for such Additional Property is recorded amongst the Public Records of the County in accordance with this Declaration. “Additional Plat” shall also mean the replat of all or any portion of the Plat or any other plat of all or any portion of the Property.

“Additional Property” shall mean any real property (other than the Property) 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.

“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 Southern Estates”, 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.

“Assessment” shall mean a sum or sums of money payable to the Association, or other Common Area, or to recreational facilities and other properties serving the parcels by the Owners of one 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.

“Association” or “HOA” shall mean **SOUTHERN ESTATES HOMEOWNERS ASSOCIATION, INC.**

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

“Architectural Review Committee” or “ARC” shall mean and refer to the body also known as **SOUTHERN ESTATES ARCHITECTURAL REVIEW COMMITTEE**.

“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 Area, together with easements over Lots and any lease 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 which crosses a Lot.

“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.

“Board of Directors” or “Board” shall mean the appointed or elected governing body of the Association, as applicable, having its normal meaning under applicable law.

“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 and such assignment shall be in writing and recorded in the official records of the county in which the Property is located. Builder shall not take or assume any obligations, responsibilities, and/or liabilities related to any “special declarant rights” (excluding the Assignee’s right to maintain sales offices, management offices, signs advertising the planned community, and models) as defined in N.C.G.S. § 47F-1-103(28) or “development rights” as defined in N.C.G.S. § 47F-1-103(11), unless Builder or assign specifically accept such obligations, responsibilities, and/or liabilities in writing.

“Bylaws” shall refer to the code adopted by the Association for regulating and managing the affairs of the Association.

“City” shall refer to the City of Sanford, North Carolina.

“Common Area” shall mean all real and personal property, and interests therein, now or hereafter owned by the Association 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 Association or as designated on plat as common area. Specifically, included as Common Area are all Stormwater 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 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 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.

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

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

“Declarant” shall mean **GARDEN STREET COMMUNITIES SOUTHEAST, LLC**, a Florida limited liability company f/k/a Esplanade Communities of Florida, LLC, its successors and assigns. 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 in which the Property is located and shall state the specific right or interest being assigned.

“Design Guidelines” shall mean those Architectural Review Committee Rules and Guidelines if and when published by the Architectural Review Committee as same may adopted and/or amended by ARC from time to time.

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

“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.

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

“Officer” shall mean a natural person appointed or elected by the Association’s Board of Directors.

“Owner” shall mean and refer to the record Owner, whether one 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.

“Plat” 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.

"Property" shall mean all of the real property described on Exhibit "A", and any such additional property as may be added by annexation subject to the terms hereof.

"Pump Station" shall mean those sewer and wastewater facilities dedicated to the City on the Plat and conveyed to the City by general warranty deed recorded at Lee County Registry of Deeds at Book 01719 Page 0244 and attached to this Declaration as Exhibit "D."

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

"SOUTHERN ESTATES" 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.

"Stormwater 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.

"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.

"Subdivision" shall mean all Property within the areas shown on the Plat(s) of SOUTHERN ESTATES.

"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 Second Supplemental Declaration to the Declaration of Covenants, Conditions, Restrictions, Easements and Assessments for **SOUTHERN ESTATES**.

"Wetland Conservation Area" or "Conservation Area" shall be those indicated on the recorded Plat should any exist.

ARTICLE II PROPERTY OWNERS' RIGHTS

2.1 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."

2.2 Common Area Rights. Upon Declarant conveying such Common Area, made up of real and/or personal property, to the Association, 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 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, 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 which 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

two-thirds (2/3) of the total votes present and voting, in person or by proxy, 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 two-thirds (2/3) of the total votes present and voting, in person or by proxy, at a duly called meeting at which a quorum is present.

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

2.3 Access. Each Owner shall have the right to ingress and egress over and across the Common Area 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.

2.4 Guests and Invitees. Each Owner, subject to the restrictions of the Association 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 Rules promulgated by the Association.

2.5 Limitation Upon Use of Common Area. 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 ARC. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area. These regulations shall be binding upon each Owner and the Association may impose reasonable monetary fines and other sanctions for violation of the Rules.

2.6 Existing Property. The Property, which is and shall be held, conveyed and occupied subject to this Declaration, is located in Lee County, North Carolina.

ARTICLE III PROPERTY OWNERS' ASSOCIATION

3.1 Ownership. It shall be mandatory that any Owner 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.

3.2 Voting. The Association shall have two (2) classes of Membership, Class "A" Members and Class "B" Members, if any, as follows:

(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 3.1 hereof; there shall be only one (1) vote per Lot;

(b) Class "B". 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, the 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 Subdivision, including all additions pursuant to Section 8.10 herein, that will ultimately be operated by the Association have been conveyed to Class "A" Members, excluding Builder; 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).

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 3.1 hereof. 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.

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.

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

3.3 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 utilities, maintain 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.

3.4 Annual Meetings. The annual meeting of the Association may 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.

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

3.6 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 at Exhibit "B."

3.7 Title to Association Property. To the extent herein provided, the Association 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 Association Property. Upon the completion of construction of a home on each Lot located within the Association 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.

3.8 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 Association 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.

ARTICLE IV RIGHTS & OBLIGATIONS OF THE ASSOCIATION

4.1 Maintenance. The Association shall maintain and keep in good and orderly condition the Common Area, Areas of Common Responsibility, and Stormwater Facilities, as originally improved by the Declarant; and the Association may levy an Assessment described hereinafter for the maintenance and proper operation of such.

The internal sewer transmission lines, the Pump Station, and force main, as well as the easements where these utilities are located, that service the Subdivision are public and shall be maintained by the City of Sanford.

The roads in the Subdivision are dedicated to the City of Sanford but have not been accepted by the City of Sanford for maintenance; therefore, the cost and responsibility of road maintenance will be a Common Expense and borne by the Association until the City of Sanford accepts the dedication and assumes such responsibilities. In the event the City of Sanford, to whom the obligation of maintaining the roads has been dedicated on the Plat, fails to accept the obligation of maintaining said roads, the Association shall assume such obligation.

4.2 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 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 attorney's fees and court costs.

4.3 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 Area 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.

4.4 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.

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:

(a) 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, 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.

(b) 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 City's regulations. The City does not expressly or by implication authorize such encroachment. This Section does not limit the City's ability to pursue all available remedies to prevent or remove such encroachments. The City 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

4.5 Damage to Common Area and Owner's Maintenance of Lot. In the event the Board or Officers determine that any Owner has failed or refused to discharge properly his 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 attorneys' 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.

4.6 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 Area 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 that 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 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.

4.7 Fines. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, tenants, or contractors to comply with any covenant, restriction, Rule, regulation contained herein, or rules or 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 of Directors 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.

(d) Fines. In addition to fines that the Board of Directors may, in its discretion, impose against an Owner, the Board may also suspend, for a reasonable time, the rights of the Owner or Owner's guest, tenants, or invitees to use Common Area and recreational facilities according to the Act. Each day a violation continues to exist, it shall be a separate violation without need for additional notices or appeals.

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

(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.

(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.

4.8 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.

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

4.10 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.

4.11 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.

4.12 Wall, Fence, and Landscaping. If a wall and/or fence, entry feature and/or gate and landscaping exist within a Common Area 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, the Association is hereby granted easements for access to the walls, fences and landscaping for maintenance purposes. On those Lots which 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 city or county in which the Property is located, 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.

ARTICLE V

RESTRICTIONS UPON INDIVIDUAL USE FOR THE COMMON GOOD

5.1 **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.

5.2 **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.

5.3 **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.

5.4 **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.

5.5 **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 ARC. No awnings, canopies or shutters shall be affixed to the exterior of a home without the prior written approval of the ARC. No reflective tinting or mirror finishes on windows shall be permitted unless approved by the ARC.

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

5.7 **Design.** Any improvements to be constructed onto any Lot will be subject to the written approval of the ARC. The design of said improvements shall be in conformance with the Design Guidelines if and when published (and as may be amended) by the ARC. Upon written request, sent by certified mail, by Owner for approval of plans and specifications, the ARC will have thirty (30) days to approve or disapprove plans. Failure of the ARC to act within thirty (30) days from receipt of definitive plans of the proposed improvement shall result in the plans being deemed approved. ARC will have exclusive control over exterior design, colors and materials that

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.

5.8 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 ARC. Over the air reception devices may be installed as allowed by law. The ARC may, in its sole discretion, grant waivers from the provisions of this paragraph.

5.9 Temporary Buildings and Building Materials.

(a) No shed, tent or temporary Structure and/or building shall be erected, maintained or used on any Property within the Subdivision; provided however, 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 ARC 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.

5.10 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.

5.11 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 ARC. Notwithstanding, Declarant and builder shall have the right and without approval: (i) to erect within the Common Areas additional Subdivision signs; (ii) to erect within the Common Areas signs advertising the sale and promotion of any lots; and (iii) to erect any signs on any lot owned by Declarant or Builder for the purpose of advertising and promoting the sale of such lot or sale

of Lots within the Subdivision. Signs may not be installed 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.

5.12 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.

(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.

5.13 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.

5.14 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 the ARC.

5.15 Oil Tanks; Bottle Tanks; Water-Softening Tanks; Wells & Pumps; Condensers; Wood Piles and 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.

5.16 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 Association's ARC, 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 the ARC that would support an impossibility defense under North Carolina law, and which delay is approved in writing by the ARC. 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.

5.17 Fences, Hedges and Landscaping. All fences, hedges, and landscaping plans must receive prior written approval from ARC before implementation. Fencing of the rear and specified portions of the side yards will be allowed on Lots only upon approval of ARC. 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.

5.18 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.

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

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

5.21 Hardship Waiver. ARC is authorized, but not required, to grant hardship waivers to Owners in the event in the ARC's absolute discretion, the strict application of these restrictions presents a bona fide hardship that is not self-imposed.

5.22 Minimum Square Footage of Improvements. Any home on any Lot described herein shall contain, at a minimum, 1,400 square feet of living area. Living area does not include: garages, porches (open or screened), terraces, or patios.

5.23 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.

5.24 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.

5.25 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 three (3) household pets per Lot may be kept; provided however, no more than two (2) of such pets may be dogs, and provided further that they are not kept, bred, or maintained for any commercial purposes. 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 that 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 kept on leashes or within secure enclosures when out of doors. For purposes of this paragraph, invisible electronic fences are not deemed to be fences in compliance herewith. 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.

5.26 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/her Lot or elsewhere in the Subdivision, nor shall there be any use or practice that 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.

5.27 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.

5.28 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).

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

5.30 Builder and Declarant Exemption. Builder and Declarant are exempt from any and all requirements contained in Article V of this Declaration.

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

5.32 Compliance with Stormwater Facilities. Each Owner within the Subdivision at the time of construction of a building, residence, or Structure shall comply with the construction plans and the Stormwater Facilities. No Owner of any Property within the Subdivision may construct or maintain, any building, residence or Structure, or under take 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 appropriate governmental agency.

If any exist, the Owners shall not remove native vegetation that becomes established within the Stormwater Facilities abutting their property. Removal includes dredging, the application of herbicide, and cutting.

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 the Stormwater Facilities.

5.33 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 land development rules and regulations of the county where the Property is located; and appropriate waivers or variances may be required in certain circumstances.

ARTICLE VI DESIGN REVIEW

6.1 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 ARC. 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 set of plans and specifications and a detailed site plan as finally approved may be retained by the Declarant or ARC.

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.

ARC'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 ARC. Such written instrument shall be returned to the Owner.

ARC 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.

ARC shall have the authority to publish "Design Guidelines", which shall outline guidelines for the design of improvements to be constructed on the Lots. ARC reserves the right to amend these Design Guidelines from time to time.

6.2 Exculpation of Declarant and ARC. Declarant and/or ARC 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 ARC 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 ARC also shall not be held responsible for any structural fault in design or construction. Neither the Association, ARC, Declarant, or any agent, officer or employee of the Association, ARC, 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.

6.3 Design Approval by Declarant. The Declarant reserves the right to maintain exclusive architectural control for new construction in all Common Area, 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 ARC. 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 ARC 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.

6.4 Builder Exemption. Builder shall be exempt from any and all requirements of this Article VI.

6.5 Variance. The Declarant shall have the power and authority, in its sole discretion, to grant variances in compliance with the Declaration; provided however, such variances shall be reasonably 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 Owner of a Lot hereby acknowledges that such variance shall constitute a waiver of any conflicting provisions of the Declaration. Each Owner of a Lot appoints Declarant as its true and lawful attorney-in-fact for the limited purpose of consenting to and granting variances.

6.6 Declarant's Right to Appoint. The Declarant shall have the right to: sit on and/or appoint the ARC, to remove without cause any person serving on the ARC, and shall also have the authority to fill any vacancies on the ARC all until such time as all Class "B" Membership terminates. After termination of Class "B" Membership, Declarant may elect one (1) person to ARC so long as Declarant owns property in the Subdivision. Any person appointed to ARC by Declarant does not have to be a Member and shall only be removed by Declarant unless otherwise allowed under this Declaration. The ARC 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 ARC.

ARTICLE VII PROPERTY OWNERS' ASSESSMENTS

7.1 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 Area, 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.

7.2 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 Assessment Lot.

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

7.3 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, Areas of Common Responsibility, Common Area, 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 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.

7.4 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.

7.5 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 for any 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 attorneys' 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 attorneys' fees 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.

7.6 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.

7.7 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.

7.8 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 attorneys' fees 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 VII shall be in favor of the Association and shall be for the benefit of all Owners.

7.9 Date of Commencement of Annual Assessments. Annual Assessments shall commence upon conveyance of the Lot to a Member, other than Declarant and 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.

7.10 Obligation for Assessments for Declarant and Builder. Notwithstanding anything herein to the contrary, as long as Class "B" Membership exists, Declarant and/or Builder may elect not to pay the Assessments. If Declarant and/or Builder elect not to pay the Assessments, Declarant and/or Builder shall pay the deficit of the Association, if any, which is the difference of the actual operating expenses of the Association (but specifically not including an allocation of capital reserves) and the sum of annual, special, and specific assessments collected by the Association in any fiscal year ("Deficit Fund"). In the event Declarant and Builder both elect to Deficit Fund, Declarant and Builder shall divide the Deficit Fund on a proportional basis that is based on the number of Lots each one owns. Upon termination of Class "B" Membership or in the event Declarant or Builder voluntarily terminate this right to Deficit Fund, Declarant and/or Builder shall be obligated to pay Assessments in accordance with this Declaration.

7.11 Exempt Property. The Assessments, charges and liens created under this Article shall not apply to the Common Area 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 VIII GENERAL PROVISIONS

8.1 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.

8.2 Amendments. The covenants and restrictions of this Declaration may be amended by an instrument signed by the Board of Directors of the Association with an attached certification that the Amendments have been approved by not less than sixty-seven percent (67%) of the Owners 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. Prior to termination of Class "B" Membership, any amendment must be consented to by the Declarant in writing. 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 Ownership, during the period of time before control of the Association is required to be turned over to the Ownership. Such Amendment by the Declarant shall not prejudice

the Ownership 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, which 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 Property 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.

8.3 Indemnification. The Association shall indemnify every Officer, Director and Owner on ARC and all other members of the ARC, as well as Declarant, against any and all expenses, including reasonable attorneys' fees, reasonably incurred by or imposed upon any Officer or Director 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 may be made a party by reason of being or having been an Officer or Director or members of the ARC, at the time such expenses are incurred. The Officers, Directors and members of the ARC shall not be liable for any mistake of judgment, negligence, or otherwise, except for his or her own individual willful misconduct or nonfeasance. The Officers, Directors, and members of the ARC shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such Officers, Directors and members of the ARC may also be Owners of the Association), and the Association shall indemnify and forever hold each such Officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein, shall not be exclusive of any other rights to which any Officer, Director, or committee member, or former Officer, Director, or members of the ARC may be entitled. The Association may, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

8.4 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 Area, 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.

8.5 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 Area 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 Area 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, the ARC (if economically feasible) and their respective Owners, employees, officers, agents and representatives.

The Association shall furnish the insurance contemplated and any judgment 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.

8.6 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.

8.7 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.

8.8 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.

To the extent the streets within the Property are intended to be publicly maintained, such streets shall be constructed to NCDOT standards for maintenance, dedication, and acceptance for public use. Although the streets may be constructed to NCDOT standards, NCDOT may not accept same due to regulations it, or other administrative agencies, has enacted. Until the City of Sanford accepts such streets, the HOA shall be obligated to maintain and repair said streets. NCDOT shall only be responsible for the maintenance and repair of Fire Tower Road. Further, Builder is not the developer of, nor did it develop in any way, the Property, which is inclusive of all streets therein; therefore, Builder is not obligated to maintain and/or repair the same. Lot Owners shall not alter or interfere with drainage patterns or ditched sections along the streets; and no drain pipes or culverts may be installed prior to NCDOT's, or other appropriate governmental authority's, acceptance of the streets without Declarant's prior written approval.

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.

8.9 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 easements 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 Area and Areas of Common Responsibility shall survive the termination of this Declaration unless the instrument of termination specifically provides otherwise.

8.10 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 Area 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 Area 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 the provisions of Section 2.2(e) or of 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 Area, 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 Area 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.

8.11 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.

8.12 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.

8.13 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 effect 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.

8.14 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.

8.15 Notices and Disclaimers As to Water Bodies, Preserves, Golf Courses and Sinkholes, NEITHER DECLARANT, BUILDER, NOR THE ASSOCIATION NOR ANY OF THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY THE "LISTED 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 THAT 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, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE DECLARANT, BUILDER, AND ASSOCIATION FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. REGARDLESS OF ANY PRECEPTION OR VERBAL COMMUNICATION PURPORTING TO REPRESENT THAT ADJACENT LAND MAY NOT BE DEVELOPED, DECLARANT, BUILDER, AND THE ASSOCIATION DISCLAIM ANY SUCH PERCEPTION OR COMMUNICATION.

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

8.16 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.

8.17 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.

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

8.19 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 IX DISCLAIMER OF LIABILITY OF ASSOCIATION

9.1 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, Lee 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 that 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 IX 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.

The Common Area 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 Area 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 this Article IX, "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 IX shall also inure to the benefit of the Declarant and Builder, which shall be fully protected hereby.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the first party has caused these presents to be duly executed in its name and by its Manager, on the ____ day of _____, 2023.

Executed and declared in the presence of:

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


Print Name: RYAN E. ROSS


Print Name: AMANDA SCHINDLER

By: 
William Bryan Adams, Manager

**STATE OF FLORIDA
COUNTY OF ESCAMBIA**

I HEREBY CERTIFY that on this 27 day of February, 2023, an officer duly qualified to take acknowledgments, personally appeared **WILLIAM BRYAN ADAMS**, Manager of **GARDEN STREET COMMUNITIES SOUTHEAST, LLC**, a Florida limited liability company f/k/a Esplanade Communities of Florida, LLC, who is personally known to me and who did not take an oath.


Notary Public
My Commission Expires: 1.25.27



Exhibits:

- A – Legal Description for “Property”
- B – Bylaws
- C – Articles of Incorporation
- D - Pump Station Warranty Deed