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Buncombe County, NC  
Otto W. DeBruhl Register of Deeds  
BK 4588 PG 364-396

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

Prepared by & return to  
Law Office of Robert P. Tucker, II  
168 B South Liberty Street  
Asheville, NC 28801

THE VILLAGE AT BRADLEY BRANCH TOWNHOMES

DECLARATION OF PLANNED COMMUNITY

THIS DECLARATION is made on the day hereinafter set forth by Bradley Branch Developers, LLC, a North Carolina Limited Liability Company, hereinafter referred to as "Declarant."

**COPY**  
RECITALS:

1. Declarant is the owner of that certain tract or parcel of land described on Exhibit "A" attached hereto and made a part hereof ("the Property"), which Property is, at the option of the Declarant, to be developed in phases or sections and divided into Lots, the entire property to known as THE VILLAGE AT BRADLEY BRANCH TOWNHOMES.

2. Declarant desires, pursuant to the restrictions herein contained, to subject to the restrictive scheme of The Village at Bradley Branch Townhomes, as the same is shown on a plat recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 118, Page 129, ("The Plat").

3. This Declaration is made pursuant to the provisions of the North Carolina Planned Community Act set forth in Chapter 47F of the General Statutes of North Carolina.

RESTRICTIVE AGREEMENT:

NOW THEREFORE, Declarant hereby declares that all of the property described on the Plat shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and the desirability of and which

shall run with the real property shown on the Plat and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**  
**DEFINITIONS**

"ADDITIONAL PROPERTY" shall mean and refer to any real property which may be added to the Property pursuant to Article IX, Section 3 hereof.

"ASSOCIATION" shall mean and refer to The Village of Bradley Branch Homeowner's Association, Inc., a nonprofit corporation organized under the laws of the State of North Carolina, its successors and assigns. As of the recording date of this Declaration, "Association" shall mean and refer to the Association which is provided for herein. Declarant may, at its option, subject additional portions of the Property to restrictions which are similar in form to those contained herein, in furtherance of the scheme of the development set forth herein. Owner of Lots in additional phases of The Village at Bradley Branch Townhomes shall become members of the Association upon recordation of amendments to this Declaration for that purpose.

"BOARD" shall mean and refer to the Executive Board for the Homeowner's Association.

"BYLAWS" shall mean and refer to the Bylaws of the Association which are attached to this Declaration as Exhibit "C" and made a part thereof.

"COMMON ELEMENTS" shall mean all real property owned by the Association for the common use and enjoyment of Owners and shown on a Plat describing portions of the Property, together with any area in which the Association has an easement or right and obligation of maintenance thereof.

"COMMON EXPENSES" shall mean and include (a) all sums lawfully assessed against the Lot Owners by the Association; (b) expenses of administration, operation, maintenance, repair and replacement of the Common Elements and facilities and any reserve funds allocated for the same; (c) expenses agreed upon as Common Expenses by the Association; (d) hazard and liability insurance premiums as required.

"DECLARANT" shall mean and refer to Bradley Branch Developers, LLC and its successors and assigns. The rights and obligations of the Declarant as described herein may be conveyed and transferred by Declarant by instrument recorded in the Office of the Register of Deeds for Buncombe County.

"DECLARANT CONTROL PERIOD" shall mean the time period commencing on the date of recordation of this Declaration in the Buncombe County Register of Deeds and terminating;

- (i) Three (3) months after the conveyance by the Declarant, in the ordinary course of business to persons other than a successor Declarant, of eighty five percent (85%) of the total number of Lots intended for development on the Property as set forth in a supplemental declaration recorded by the Declarant

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- (ii) in the Buncombe County Register of Deeds on or before December 31, 2012, making specific reference to this Section; or  
Three (3) months following the date the Declarant surrenders its authority to appoint directors of the Association by an express amendment to this Declaration executed and recorded by the Declarant in the Office of the Register of Deeds for Buncombe County.
- 12/31/12

"DWELLING" shall mean and refer to a building situated upon a Lot and intended for use and occupancy as a residence.

"LIMITED COMMON ELEMENTS" shall mean portions of the Common Elements allocated by this Declaration, a Plat, or operation of law for the exclusive use the Owner(s) of one or more but fewer than all the Lots.

"LOT" shall mean and refer to any number plot of land shown on the Plat, with the exception of the Common Elements.

"MEMBER" shall mean and refer to any person or entity who holds membership with voting rights in the Association, which membership shall be derived from ownership of any Lot within Royal Pines Village.

"OCCUPANT" shall mean and refer to any Person who is in possession of a Lot, including Lot Owners and tenants, guests and invitees of the Owners.

"OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of this or subsequent Lots with The Village at Bradley Branch Townhomes, but excluding those having such interests merely as security for the performance of an obligation.

"PROPERTY" shall mean and refer to that certain real property shown and described on Exhibit "A" as attached hereto, subject to expansion and addition pursuant to Article IX, Section 3 hereof.

"PERSON" shall mean and refer to a natural person, corporation, estate, trust, partnership, association, joint venture, limited liability company, or other legal or commercial entity, or any combination thereof.

"RULES AND REGULATIONS" shall mean and refer to the rules and regulations of the Planned Community promulgated by the Executive Board of the Association.

"THE ACT" shall mean and refer to the North Carolina Planned Community Act set forth in Chapter 47F of the General Statutes of North Carolina, as it may be amended.

**ARTICLE II**  
**COMMON ELEMENTS OWNERSHIP AND MAINTENANCE**

**SECTION 1. OWNER'S EASEMENTS OF ENJOYMENT.** Every Owner shall have the right of ingress to and egress from the Common Elements, together with the right of enjoyment in and to the Common Elements, which rights shall be appurtenant to and shall pass with the title to every Lot.

Use and enjoyment of and access to a Limited Common Element shall be limited to the Owner of the Lot which the Limited Common Element is designated, which designation shall appear either in this Declaration (as hereinafter amended), the Plat, or the deed for the Lot. The types of Limited Common Elements to be so designated will include the following:

- (a) **Parking Spaces.** Parking spaces designated on a plat for use in connection with the ownership of a particular Lot, which designation shall include, whether shown on a plat or not, the paved driveway located between each Lot and the street which serves said lot; and
- (b) **Walkways.** Walkways are walkways leading from a concrete drive to an entrance to the Dwelling located on a Lot; and
- (c) **Entrances.** An Entrance is any set of steps, landing or doorway located outside the boundaries of a Lot leading to the interior of the Dwelling located on said Lot.

**SECTION 2. DELEGATION OF USE.** Any Owner may delegate his rights of enjoyment of the Common Elements and/or Limited Common Elements to the members of his family, his tenants, contract purchasers who reside of the Lot, or to his guests. A Lot Owner who has delegated rights in the Common Elements and/or Limited Common Elements to his tenant shall not, in addition to his tenant, have rights in the Common Elements or Limited Common Elements.

**SECTION 3. RULES AND REGULATIONS.** The Executive Board of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Elements and Limited Common Elements. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board, shall be recorded in its minutes, which shall be maintained at the office of the person or entity managing the Common Elements and Limited Common Elements on behalf of the Association and available to the Members for inspection during normal business hours, or at the designated office of the Association, if there is not property manager. Any changes in the rules and regulations shall be effective only upon ratification at a regular or special meeting of the membership by affirmative vote of Owners of Lots to which fifty percent (50%) of the votes in the Association are allocated.

**SECTION 4. DECLARANT'S CONVEYANCE OF TITLE TO COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.** At such times as it deems appropriate, but not later than at such time as one hundred percent (100%) of Lots to which fifty percent (50%) of the votes in the Association are allocated.

**SECTION 5. MORTGAGING COMMON AREA.** The Association shall have the power to borrow money for the purpose of improving the Common Elements, and pursuant thereto, to subject the Common Elements or any person thereof that it owns to a Deed of Trust; provided, however, that the execution of such Deed of Trust shall require the same approval of the membership which is required for special assessments for capital improvements.

**SECTION 6. MAINTENANCE BY THE ASSOCIATION.** The management, maintenance, repair, replacement, reconstruction, alteration and improvement of the Common Elements, wherever located, shall be the responsibility of the Association and, subject to subparagraph (B) hereof, the cost and expense thereof shall be a part of the Common Expenses. All damaged caused to a Dwelling by any work on or to the Common Elements done by or for the Association shall be repaired by the Association and the cost thereof shall be a Common Expense.

**SECTION 7. MAINTENANCE BY THE LOT OWNER.** Each Lot Owner shall promptly repair, replace or reconstruct, at his or its own expense: (i) all damage to the Common Elements or any Dwelling intentionally or negligently caused by such Lot Owner or any Occupant of his or its Lot, his or its guests, agents, tenants, servants, employees or contractors; and (ii) those Limited Common Elements which are attributable to his or its Lot. If such Lot Owner responsible for such repair, replacement or reconstruction fails to make the necessary repairs within ten (10) days after written demand upon him or it to do so by the Association, the same may be repaired, replaced, or reconstructed by the Association and the cost thereof shall be assessed against the Lot owned by such Lot Owner. If such damage is covered by insurance maintained by the Association, the insurance proceeds shall be first used to for such repair, replacement or reconstruction and the Lot Owner shall be responsible for payment of all costs and expenses thereof in excess of the insurance proceeds. Any payment due under this subparagraph by said Lot Owner shall be paid upon demand from the Association and if not then paid, such amount due from the Unit Owner shall be levied as a Special Assessment against such Lot owned by the Lot Owner. Noting contained herein shall modify any waiver by insurance companies of right of subrogation.

### **ARTICLE III**

#### **THE ASSOCIATION: MEMBERSHIP AND VOTING RIGHTS**

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

**SECTION 2.** The Association shall have two (2) voting memberships:

- A. **CLASS A:** Class A. Members shall be all Owners, including Declarant, each of whom shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; the vote for such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
- B. **CLASS B:** The Class B Member shall be the Declarant as hereinabove defined during the Declarant Control Period and such Member shall be entitled to three (3) votes for each of the 168 Lots contemplated within the various phases of The Village at Bradley Branch Townhomes. The Class B membership shall cease and be converted to Class A membership upon the termination of the Declarant Control Period.

**SECTION 3. ORGANIZATION OF THE ASSOCIATION.** The Village at Bradley Branch Townhomes Homeowner's Association, Inc. shall be organized pursuant to North Carolina Law as a non-profit organization.

SECTION 4. POWERS OF THE ASSOCIATION. Pursuant to Section 3-102 of the Act, the Association shall have all those powers enumerated in said section. The Executive Board of the Association shall be organized and run pursuant to Section 3-106 of the Act. Unless altered by a vote of the Association and amendment of the Bylaws, the necessary quorum at an Association Meeting shall be 67% set forth in Section 3-110 of the Act, except that Subsection 3-110(c) of the Act shall not be applicable to the Association. Declarant shall act as the Executive Board of the Association until the Declarant Control Period ends. Pursuant to Section 3-103(d) of the Act, during the Declarant Control Period, Declarant shall have the additional right to appoint and remove members of the Executive Board of the Association.

SECTION 5. AGREEMENTS WITH OTHER ASSOCIATIONS. The Executive Board of the Association or the Declarant on behalf of the Association during the Declarant Control Period, shall be authorized to enter into binding agreements with The Village at Bradley Branch Townhomes Homeowner's Association, Inc. or any other association including, but not limited to, parking, utilities, storm water drainage and/or recreational amenities. Any costs associated with the agreements contemplated by this Section may be allocated to the Members of the Association as part of Common Expenses.

#### **ARTICLE IV**

##### **COVENANT FOR MAINTENANCE ASSESSMENTS**

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant hereby covenants and each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association monthly and special assessments to be established and collected hereinafter provided. The Declarant shall bear the responsibility of maintenance of all Lots and all the Common Elements from the time of the recording of this Declaration. Upon the conveyance of a Lot to an Owner other than the Declarant, such Owner shall assume the obligation of maintenance of the Lot conveyed. The Association shall thereafter be obligated to maintain the Common Elements so conveyed.

Assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the person or entity who was the Owner of a Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

During the period in which the Declarant shall act as the Executive Board of the Association as stated above, Declarant shall collect and receive from all Owners the monthly assessment of Sixty Five Dollars and 00/100 (\$65.00). After such time period, the elected or appointed Executive Board of the Association shall provide such financial records of the Association pursuant to Section 3-118 of the Act. Declarant shall be responsible for all assessments on each completed Unit used as a model unit until sold by Declarant.

SECTION 2. INITIAL ASSESSMENT. In order to create a reserve fund for the Association, as stated above, Declarant shall collect at each closing of the sale of a Lot from Declarant to the first purchaser of the Lot, an Initial Assessment of One Hundred Dollars and 00/100 (\$100.00), which assessment shall be paid to the Association and deposited in its general account.

SECTION 3. PURPOSE OF ASSESSMENTS. The Assessments levied by the Association shall be used to maintain Common Elements and Limited Common Elements, including, but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, procurement and maintenance of insurance related to the Common Elements and Limited Common Elements, their facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs that may arise. Any Assessment charged and collected shall relate to the cost of maintenance of the Common Elements and Limited Common Elements and those costs associated with such maintenance and shall include a reserve fund in reasonable amount in anticipation of such costs. In addition to maintenance of common Elements and Limited Common Elements, as herein described, the assessments levied by the Association shall be used to maintain the exterior of each Dwelling, including the roofs, gutters, downspouts and exterior finishes of each Dwelling.

SECTION 4. STREET MAINTENANCE. The streets within The Village at Bradley Branch Townhomes shall be designed and constructed pursuant to specifications issued by Buncombe County for subdivision streets. After the completion of construction of the Streets and satisfaction of other requirements by Buncombe County, the streets shall be submitted to Buncombe County for inclusion of said streets in the lists of streets maintained by Buncombe County. After the completion and construction of, and approval of said streets by said County, but prior to acceptance by said County for maintenance by it, the cost of continuing maintenance of the subdivision's streets shall be a Common Expense as described herein and shall be subject to annual assessment.

SECTION 5. UNIFORM RATE OF ASSESSMENT. Assessments must be fixed at a uniform rate for all Lots. The amount of the assessments shall not increase more than seven percent (7%) in any calendar year, unless the increase is approved by the Lot Owners at a special meeting of the members called for such purpose.

SECTION 6. DUE DATES OF ASSESSMENTS. The Executive Board of the Association shall fix the amount of the monthly assessment against each Lot and shall send written notice of each change in the amount of the monthly assessment to every Owner subject thereto. The due dates of such assessments shall be established by the executive Board; such assessments shall be payable on the due date, but may be collected in monthly, quarterly or annual assessments, as established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an office of the Association setting forth whether the assessments on a specified Lot have been paid.

SECTION 7. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days of the due date shall bear interest from the due date at a rate of eight percent (8%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose its lien against the Lot against which the delinquent assessment have been levied. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of Common Elements or abandonment of his Lot.

SECTION 8. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Not sale or transfer

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shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall prevent and any mortgagee may, at its option, pay any delinquent obligations of an Owner. The Association shall notify by registered mail, return receipt requested, any mortgagee of any delinquency or default in the presence of any obligations of an Owner prior to taking any action against such Owner which would affect Mortgagee.

**SECTION 9. SPECIAL ASSESSMENTS.** If the reserves contemplated in Section 3 of this Article are inadequate for any reason for the payment of necessary expenditures, the Executive Board of the Association may at any time levy Special Assessments against the Owners in accordance with the equal percentage of Common Expenses allocated to each Lot by this Declaration, which Special Assessments may be payable in a lump sum or in instalments as the Executive Board of the Association may determine, provided that repair or reconstruction of any portion of the Property requiring such Special Assessment against all Owners in excess of three thousand dollars and 00/100 (\$3,000.00) shall first be approved by the Lot Owners at a special meeting of the members called for such purpose. The Executive Board of the Association shall serve notice of any such Special Assessment on all Lot Owners by a statement in writing giving the amount of the assessment and reason therefore, and such Special Assessment shall, unless other specified in such notice, become effective when the next monthly installment is due. All Lot Owners shall thereafter be obligated to pay the adjusted monthly amount or, if not payable in installments, the entire amount of the Special Assessment as provided for in the notice of Special Assessments.

Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Lots to which that Limited Common Element is assigned.

**SECTION 10. FISCAL YEAR.** The fiscal year for the Community and the Association shall be the calendar year.

**SECTION 11. BUDGET.** Each year on or before November 15, the Executive Board of the Association shall prepare and adopt a budget for the Homeowner's Association, for the purpose of (i) providing for the payment of all Common Expenses together with such amounts as considered necessary by the Executive Board for contingencies and reserves; (ii) determining the amount of the Annual Assessment to be collected from the Lot Owner in order to provide for the payment of such Common Expenses and necessary reserves of the Association, taking into consideration any expected income and any surplus from the prior year's operation; and (iii) to allocate and assess such Common Expenses among the Lot Owners according to the percentage of Common Expenses allocated to each Lot by this Declaration. Such budget shall project all expenses for the forthcoming year and shall contain an estimate of the total amount which it considers necessary to pay for the cost of the administration, operation and management of the Planned Community; the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board pursuant to the provisions of this Declaration or the Bylaws; the cost of maintenance, management, operation, repair, replacement and restoration of the Common Elements or any part thereof and those parts of the Dwellings as to which it is the responsibility of the Association to maintain, repair, and replace; the cost of wages, materials, services, supplies and other expenses that may be declared to be Common Expenses by this Declaration, the Act, the Bylaws or a resolution of the Association; such amounts as the Board may deem necessary and proper in providing for the convenience, comfort and well-being of the Lot Owners and for the rendering to the Lot Owners of all related services; the amount necessary to make up any deficit in the budget for any prior year, and any other expenses lawfully agreed upon. The budget shall include a reasonable amount for contingencies and reserves including, without limitation, an amount for a general operation reserve and a reserve for the repairs and



replacements as its hereinafter provided. Upon adoption of the annual budget, the Board shall cause to be sent to each Lot Owner, on or before December 1 preceding the fiscal year to which the budget applies, a copy of the budget in a reasonably itemized form which sets forth the amount of Common Expenses and provides notice of the amount of the annual assessment against each Lot based upon such budget and each Unit's allocated percentage of common Expenses as set forth in this Declaration. The budget shall also state the amount of the twelve (12) monthly installment payments of the annual assessment due from each Lot Owner. The assessment shall be deemed levied upon the giving of such notice. Any increase in the annual assessment which exceeds the annual assessment for the previous year by more than twenty percent (20%) must be approved by Lot Owners at a meeting specially called for such purpose after notice being duly given.

## **ARTICLE V**

### **ARCHITECTURAL CONTROL**

**APPROVAL OF PLANS AND SPECIFICATIONS.** No building, fence, wall, deck, patio, mailbox, or other structure shall be commenced, erected or maintained within The Village at Bradley Branch Townhomes, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications shall have been submitted and approved in writing by the Executive Board of the Association.

The Executive Board shall have the right to enforce the compliance with this Declaration and the then existing Architectural Guidelines which have been adopted and published for Lot Owners by the Architectural Committee.

The Executive Board shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications in an amount not to exceed twenty five dollars and 00/100 (\$25.00). Upon giving approval to such plans and specifications, the Owner shall be obligated to begin construction and complete the same in conformity with such plans as have been previously approved by the Architectural Committee, and the Architectural Committee shall be entitled to stop through injunction or other legal means, any construction which is in violation of these restrictions. No changes can be made to a building exterior or Common Element without the consent of the Executive Board and the action of the Board must be ratified at a regular or special meeting of the membership by affirmative vote of Owners of Lots to which ninety percent (90%) of the votes in the Association are allocated. Such approval must in advance of commencement of any work by any Owner and such approval must be in writing. Any unapproved addition or alteration to a Dwelling must be corrected at the Owner's expense. Any damage to the Dwelling must be immediately repaired by the Owner responsible.

## **ARTICLE VI**

### **PROTECTIVE COVENANTS**

**SECTION 1. RESIDENTIAL USE AND RENTAL OF LOTS.** All Lots shall be used, improved and devoted exclusively to residential use. No trade or business shall be carried on upon any Lot, but this restriction shall not prohibit a home occupation which does not unreasonably increase traffic or cause any noxious or offensive activity within The Village at Bradley Branch Townhomes. Nothing herein shall be deemed to prevent the Owner of any Lot from leasing a Lot, subject to all provisions of this Declaration. An Owner may be prohibited from changing the status of his/her Lot from an owner-occupied Lot to a rental Lot by action of the Association in those instances in which there are at that time at least twenty-five percent of the Lots within the Village at Bradley Branch Townhomes which are already subject to leases.

SECTION 2. NUISANCES. No noxious or offensive activities shall be conducted upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No plant, animal, device or thing of any sort whose normal use or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in The Village at Bradley Branch Townhomes by the Lot Owners, tenants and guests thereof may be maintained.

SECTION 3. ANIMALS. Generally recognized house pets, in reasonable numbers, may be kept and maintained at a Lot, provided such pets are not kept or maintained for commercial purposes. All pets must be kept under the control of their Owner when they are outside the occupant's Dwelling and must not become a nuisance to other residents at any time. The keeping of pets shall be subject to reasonable rules and regulations promulgated and published by the Association, which rules and regulations may limit the weight of pets and prohibit dogs which are generally recognized as dangerous. All animal waste must be contained and disposed of by the owner of such animal. All pets must always be current on all vaccinations and medications, including, but not limited to rabies vaccines, flea and tick prevention. No pets are allowed to urinate on any plants within The Village at Bradley Branch Townhomes. Not pet may be tied or otherwise attached to any Dwelling at any time nor may any pet be left unattended.

SECTION 4. INVESTMENT PROPERTIES. No Lot Owner shall rent his/her or its Dwelling for transient or hotel purposes, which for purposes of these Declarations shall be defined as either rental for any period less than six (6) months or any rental if the lessee of the Dwelling is provided customary hotel services. Each permitted lease shall lease and entire unit, shall be in writing, and shall be subject to these Declarations and Bylaws, and any failure of the lessee to comply with the terms of such documents shall be at default under the lease. Not unit shall be subject to or used for any timesharing, cooperative, licensing, or other arrangement that would entail weekly, monthly, or any other type of revolving or periodic occupancy by multiple Lot Owners, Cooperators, or Timesharing participants. The Declarant shall have the full right and authority to lease any and all Lots which it owns.

SECTION 5. PARKING. No parking of unlicensed or non-operable vehicles shall be allowed on any Lot outside a Dwelling. Except for emergency repairs, no person shall repair, restore or store any vehicle, boat, trailer or recreational vehicle upon any Lot outside a Dwelling. The use of parking areas within The Village at Bradley Branch Townhomes, whether they be designated for use by a particular Lot or for general use, shall be subject to reasonable rules and regulations promulgated and published by the Association. Vehicles may not park on any street within The Village at Bradley Branch Townhomes on a continuous basis, nor may any vehicle park in extra parking spaces on a continuous basis. Trucks that will not fit into a Unit's garage due to their size will not be allowed to park in the Owner's front driveway on a regular basis.

SECTION 6. MOTOR VEHICLES. All motor vehicles shall be maintained in proper operating condition so as not to be a nuisance by noise, exhaust emissions or otherwise. Not motor vehicles shall be driven on pathways, unpaved Common Elements, or roadway shoulders within The Village at Bradley Branch Townhomes.

SECTION 7. OUTSIDE ANTENNAE. No outside radio or television antennae or satellite dishes shall be erected on any Lot, except as approved in writing by the Association. Satellite dishes of no more than twenty-four (24) inches in diameter will be allowed within The Village at Bradley Branch Townhomes, subject to approval by the Association of the placement of the same on any Lot.

**SECTION 8. TRASH RECEPTACLES.** All trash shall be kept only in the trash receptacles provided by the Association and in areas upon a Lot which conform to standards published in reasonable rules and regulations promulgated and published by the Association.

**SECTION 9. SIGNS AND FLAGS.** No permanent signs of any kind shall be displayed to the public view on any Lot. After occupancy, a sign of not more than two square feet advertising the property for sale or rent shall be allowed to be placed in a front window of the Dwelling. Nothing in this paragraph shall be construed to prevent the Declarant the erecting entrance display signs or signs designated to designate areas within The Village at Bradley Branch Townhomes, including street signs. Not flag or flags other than one (1) American flag may be displayed to the public view on any Lot. Declarant shall be allowed to post sales, open house and other signs at any locations until all Units are sold.

**SECTION 10. LIVESTOCK.** No livestock or poultry may be kept on any part of The Village at Bradley Branch Townhomes.

**SECTION 11. FENCES.** Chain link, barbed, chicken wire or any similar fencing shall not be permitted on any Lot. All proposed fences must be approved by the Association.

**SECTION 12. MOTORCYCLES.** Motorcycles, mini-bikes, dune buggies, motorized bikes or similar recreational vehicles may only be operated within the bounds of The Village at Bradley Branch Townhomes while riding to and from a residence to Bradley Branch Road and may not be ridden within the bounds of the Property for any other purpose.

**SECTION 13. PROGRESS ENERGY CONTRACT.** The Declarant reserves the right to subject the real property in The Village at Bradley Branch Townhomes to a contract with Progress Energy Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Progress Energy by the Owner of each Lot or by the Association.

**SECTION 14. PLANTS.** Declarant will establish and plant common basic deciduous trees at each Lot. Each Owner may add to the planting areas established, provided that such Owner will be responsible for maintenance of each additional plant. The Association will be responsible for upgrading the mulched areas once per year for all Owners. All planting, gardening and materials of like kind or use must be stored at a level below the siding of each Unit on each Lot.

**SECTION 15. HOLIDAY DECORATIONS.** Holiday decorations on Common Elements may be displayed by the Association during December of each year. Owner may decorate their respective Dwellings, but in no way may any Owner cause damage or destruction to the outside of any Dwelling. All decorations must be completely removed by not later than January 6<sup>th</sup> of the following year.

**SECTION 16. GARAGE DOORS.** Garage doors on each Unit are to remain closed except when in use. If opened for air circulation, the opened height of such garage door must be less than twelve (12) inches, measured from the bottom of the garage door to the ground. No Owner is allowed to paint any part of his or her garage door. The Association will be responsible for such painting while the general maintenance, repair and upkeep of each garage door will be the sole responsibility of each Owner.

SECTION 17. PLAY EQUIPMENT. All play or sports equipment shall be located only in the rear yard of a Dwelling unless the Lot Owner has express written consent from the Executive Board for any exception thereof.

## ARTICLE VII INSURANCE

1. Property and Casualty Insurance. The Association shall procure and maintain property and casualty insurance on the Common Elements and all Dwellings, fixtures and other improvements to all the Lots, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. Such policy of insurance shall be in the name of, and the proceeds thereof shall be payable to, the Association as Insurance Trustee for all Lot Owners and Security Holders as their interests may appear, which proceeds shall be disbursed pursuant to the provisions of the Act, this Declaration, and the Bylaws of the Association. Such insurance shall in the amount equal to the full replacement value of the Dwelling and its fixtures and the improvements located on a Lot, exclusive of land, excavations, foundations and other items normally excluded from property insurance policies and shall insure against such risks and contain such provisions including deductibles as the Board shall from time to time determine, but at a minimum shall conform in all respects to the requirements of the Act and the Bylaws and shall provide that, notwithstanding any provision thereof that give the insurer an election to restore or repair damage in lieu of making a cash settlement, such option shall not be exercisable if such repair or restoration would be prohibited by the provisions of Section 47F-3-113(h) of the Act.

The Lot Owner shall have the obligation to procure for his or its benefit insurance coverage on personal property and contents located within his, her or its Lot.

An insurance policy issued to the Association does not prevent a Lot Owner from obtaining insurance for the Lot Owner's own benefit.

2. Public Liability Insurance. The Association shall maintain liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with use, ownership, or maintenance of the Common Elements and covering the Association, the Board, Officers and all agents and employees of the Association and all Lot Owners and persons entitled to occupy any Lot or portion thereof. Such insurance shall comply with the Act and shall (i) contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; and (ii) insure all of such benefited parties against such liability arising out of or in connection with use, ownership or maintenance of the Common elements, and the driveways, sidewalks, parking areas, and public spaces adjoining the Townhome. Such insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his or its action or claim against another named insured.

3. Policy Requirements. Each policy of insurance provided for herein shall:

- (a) Each Unit Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest;
- (b) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;
- (c) No act of omission by any Lot Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

4. Payment of Insurance Premiums. The cost of premiums for the insurance policies described in this Article shall be a Common Expense.

5. Improvements. Each Lot Owner shall be required to notify the Board of all improvements to his, her or its Unit, the value of which is in excess of One Thousand Dollars and 00/100 (\$1,000.00).

6. Insurance Trustee. All policies of casualty insurance purchased by the Association shall be for the benefit of the Association, the Lot Owners and their respective mortgagees, as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to the Association as Insurance Trustee. All proceeds of such insurance shall be used and applied as provided in the Act, this Declaration and the Bylaws. Insurance proceeds for the physical loss covered by the casualty insurance maintained by the Association shall be payable to the Association as Insurance Trustee and not to any Lot Owner or mortgagee. The Association as Insurance Trustee shall hold any such insurance proceeds in trust for the Lot Owner and lien holders as their respective interest may appear. All such insurance proceeds shall be disbursed by the Insurance Trustee for the repair or restoration of the damaged property as is provided in the Act, this Declaration, and the Bylaws, and the Lot Owner or lien holders are not entitled to receive payment for any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the planned community is terminated.

7. Association as Agent. The Association is hereby irrevocably appointed Agent for each Lot Owner and for each owner and hold of a security interest, deed of trust or other lien upon any Lot or any part of The Village of Bradley Branch Townhomes, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

8. Notice of Action in Excess of Coverage. In any legal action in which the Association or the Lot Owner may be exposed to liability in excess of insurance coverage, the Association shall give notice of the exposure within a reasonable time to all Lot Owners who may be exposed to liability and such Owners have the right to intervene and defend his, her or its interests.

#### **ARTICLE VIII**

##### **OBLIGATIONS TO MORTGAGEES**

The following provisions are established for the benefit of the holders of mortgages (the definition of mortgage to include deeds of trust or other security instruments) encumbering any Lots located within The Village at Bradley Branch Townhomes.

A. The Association shall be obligated to notify the holder of any first mortgage on a Lot, upon request of such holder, of any default by the Lot Owner in the performance of any of such Owner's obligations described herein (including failure to pay assessments as and when due) which is not cured within sixty (60) days from the date of such default.

B. Written notice by the Association shall be sent, upon request, to the holder of all first mortgage encumbering any of the Lots located within The Village at Bradley Branch Townhomes setting forth the purpose of the meeting not less than thirty (30) days in advance of any meeting

being called for the purpose of amending, extending or renewing any of the provisions of this Declaration or the Articles of Incorporation or Bylaws of the Association. No such amendment, extension or renewal shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot located with The Village at Bradley Branch Townhomes unless such mortgage holder shall consent thereto in writing.

C. Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage, owned) and Owners (other than the Declarant) of the Lots in The Village at Bradley Branch Townhomes have given their prior written approval, the Association shall not be entitled to:

- (1) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots in The Village at Bradley Branch Townhomes. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association shall not be deemed a transfer within the meaning of this paragraph;
- (2) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;
- (3) By act or omission change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the maintenance of the Common Elements, or the upkeep of lawns and plantings in The Village at Bradley Branch Townhomes;
- (4) Fail to maintain fire and extended coverage on insurable Common Elements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insured value (based on current replacement costs); and
- (5) Use hazard insurance proceeds for losses to any Common Elements for other than the repair, replacement or reconstruction of such Common Elements.

D. First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against any of the Common Elements and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Elements and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Entitlement to such payments shall be owed and immediate reimbursement therefore from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of all first mortgagees of Lots in The Village at Bradley Branch Townhomes duly executed by the Association, and an original or certified copy of such agreement shall be furnished to Declarant.

E. No provision shall be construed to give a Lot Owner or any other party priority over any rights of first mortgagees of Lots in The Village at Bradley Branch Townhomes pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Elements.

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**ARTICLE IX**  
**GENERAL PROVISIONS**

**SECTION 1. DURATION.** The covenants and restrictions contained in this Declaration shall run with and bind the properties which are made subject hereto for a period of twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, after which time, such covenants and restrictions shall automatically extended for successive periods of ten (10) years each.

**SECTION 2. AMENDMENT.** This Declaration may be amended:

A. Prior to the conveyance of all the Common Elements from Declarant to the Association, by the Declarant, in order to correct any obvious error or inconsistency in drafting, typing or reproduction of this Declaration, or to issue rules and regulations which interpret, explain or make more definite and certain provisions hereof and are in furtherance of this Declaration, which amendment can be made without the joinder of Lot Owners or the Association; and

B. By the Association, after conveyance of all the Common Elements from Declarant to the Association, by an affirmative vote or written instrument executed by the Owners of the Lots to which at least Sixty-Seven percent (67%) of the votes described in Article III hereof.

**SECTION 3. SPECIAL DECLARANT RIGHTS.** Pursuant to Section 1-103(28) and 2-121 of the Act, the Declarant does hereby reserve the following "special declarant rights":

A. The right to enter the Lots shown on the Plat and the Common Elements shown thereon for the purpose of construction and maintenance of improvements indicated on the Plat;

B. The right to maintain while it owns Lots it holds for sale, a sales office and model homes, together with the right to erect signs advertising Lots for sale;

C. The right to make full use of easements or rights of way over and upon the Common Elements for the purpose of making improvements within The Village at Bradley Branch Townhomes, particularly the right to use said easements and rights of way in adding new phases of The Village at Bradley Branch Townhomes to that shown on the Plat;

D. The right to appoint or remove any officer or Executive Board member of the Association during the period of Declarant control as provided for in Article II hereof; and

E. The right, but not the obligation, to add new phase of The Village at Bradley Branch Townhomes out of the Property, to make all easements, rights of way and improvements of each phase of The Village at Bradley Branch Townhomes equally accessible to all phases thereof, and to allow Owners of Lots in additional phases of The Village at Bradley Branch Townhomes to become members of the Association with the same rights and obligations as those of the Owners and Lots within Phase I of The Village at Bradley Branch Townhomes as described herein.

F. To make the Planned Community part of a larger Condominium or Planned Community and to add Additional Real Estate to the total area comprising the Planned Community.

G. The Special Declarant Rights described herein shall be exercised within one (1) year from the time of Declarant's conveyance of one hundred percent (100%) of the Units to Unit Owners other than a Declarant.

**SECTION 4. ENFORCEMENT.** The Association, any Owner or the Declarant shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this

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Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 5. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgement or court shall in no way affect other provisions of this Declaration, which shall remain in full force and effect.

SECTION 6. CONSTRUCTION. This Declaration is made pursuant to the Act and shall be construed and controlled by and under the laws of the State of North Carolina.

SECTION 7. POWER OF ASSOCIATION AGAINST DECLARANT. No act by the Association shall prevent the Declarant from completing the development known as The Village at Bradley Branch Townhomes as currently contemplated.

COPY



IN WITNESS WHEREOF, Declarant has caused this instrument to be executed by its duly authorized member, who has signed and sealed this instrument, this the 27<sup>th</sup> day of June, 2008.

DECLARANT:

BRADLEY BRANCH DEVELOPERS, LLC

By: [Signature]  
Member Manager

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

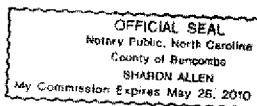
I, a Notary Public of the County and State aforesaid, certify that Stanley N. Robinson personally came before me this day and acknowledged that he is a Member Manager of Bradley Branch Developers, LLC, a North Carolina Limited Liability Company, and that he, being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official stamp or seal, this the 27<sup>th</sup> day, of June, 2008.

COPY

Sharon Allen  
Notary Public  
My Commission Expires: \_\_\_\_\_

Sharon Allen  
Notary Printed Name



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**EXHIBIT "A"**

**LYING IN THE LIMESTONE TOWNSHIP, BUNCOMBE COUNTY, NORTH CAROLINA**

BEING all of that 5.027 acres, more or less, of the Village at Bradley Branch, Phase II as shown on a plat recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 118, at Page 129, reference to which is hereby made for a more particular description of said 5.027 acres, more or less.

COPY

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**EXHIBIT A-1**

**PERMITTED EXCEPTIONS**

1. UCC Financing Statement as shown in Deed Book 4284, at Page 1921 recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
2. Estoppel Certificate regarding individually metered multifamily developments / waterlines on private streets as shown in Deed Book 4359, at Page 1650, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
3. Assessments as shown in Deed Book 2382, at Page 226, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
4. Road Maintenance as shown in Deed Book 2382, Page 226, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
5. Easement Agreement as shown in Deed Book 1254, at Page 644, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
6. Right of Way Settlement Agreement as shown in Deed Book 2368, at Page 445, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
7. Easement to the Department of Transportation as shown in Deed Book 2075, at Page 722, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
8. Sewer Easement as shown in Deed Book 4264, at Page 1924. Recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
9. Waterline Easement to City of Asheville as shown in Deed Book 2400, at Page 748, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
10. Easement to CP&L as shown in Deed Book 2309, at Page 873, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
11. Subject to Building Restrictions as shown in Plat Book 110, at Page 54, and Plat Book 78, at Page 90, and Plat Book 80, at Page 49 and at Page 74, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
12. Non- Exclusive use of road rights of way as shown on Plat Book 78, at Page 90, and Plat Book 110, at Page 154, and Plat Book 80, at Page 49, and Plat Book 80, at Page 74, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
13. Right of Way Agreement as shown in Deed Book 4287, at Page 432, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
14. Subject to a Withdrawal of Real Property and Reservation Agreement as shown in Deed Book 4284, at Page 1736, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
15. Waterline easement as shown in Deed Book 4476, at Page 358 and shown in Plat Book 114, at Page 38, and Deed Book 4476, at Page 364, and Plat Book 114, at Page 37 and Deed Book 4491, at Page 853.
16. Waterline Easement as shown in Deed Book 4517, at Page 1616, and in Deed Book 4557, at Page 961, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
17. Amendment to Restrictions as shown in Deed Book 4566, at Page 519, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.
18. Easement to Charter Communications as shown in Deed Book 4571, at Page 919, recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.

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**EXHIBIT "B"**

**LYING IN BUNCOMBE COUNTY, NC**

Being all that certain Tract or parcel of land shown on a plat entitled "Mills Creek Condominiums Phase 2", which said plat is recorded in the Office of the Register of Deeds for Buncombe County in Plat Book 118, at Page 129, reference to which is made for a more particular description of said Tract.

COPY

EXHIBIT "C"

BYLAWS OF  
THE VILLAGE AT BRADLEY BRANCH TOWNHOMES HOMEOWNER'S  
ASSOCIATION, INC.  
A NORTH CAROLINA NON-PROFIT CORPORATION

ARTICLE I

Identitv

These are the Bylaws of THE VILLAGE AT BRADLEY BRANCH TOWNHOMES HOMEOWNER'S ASSOCIATION, INC., a North Carolina nonprofit corporation (the "Association").

For purposes of these Bylaws, terms specifically defined either in the Declaration of Covenants, Restrictions, et al. (the "Declaration") for the residential Planned Community to be known as "The Village at Bradley Branch Townhomes" and located in Buncombe County, North Carolina (herein "Community"), or the North Carolina Nonprofit Corporation Act, Chapter 55A, North Carolina General Statutes (herein "the Corporation Act"), or the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes (herein "the Act") shall have the same meaning herein. In case of a conflict with defined terms, the Declaration shall control to the extent allowed by law. Unless the Declaration or Bylaws expressly provide otherwise, the procedures and substantive matters governing the Association can be determined by reference to the Corporation Act or the Planned Community Act. In the event of any conflict between the Corporation Act and the Condominium Act, the Condominium Act shall control.

ARTICLE II

Qualifications and Responsibilities  
of Members

2.1. Membership; Voting Member. Every Owner of a Lot in the Community shall be a member of the Association, and shall remain a member until he ceases to be an Owner of a Lot. When there is more than one Owner of a Lot, all such persons shall be members of the Association; provided, however, that in such a case, said Owners shall designate in writing with the Secretary of the Association a Voting Member for purposes of casting the one (1) vote per Lot on matters requiring a vote of the Association, including, but not limited to, any amendments to the Declaration or election of persons for the Association Board of Directors ("Board"). For the purpose of sufficient receipt of notice of violations or for any other notices required by the Declaration or these Bylaws, notice to the Voting Member shall be binding on all other Owners of the Lot.

2.2. Registration. It shall be the duty of each Owner of a Lot to register his/her name and his/her mailing address with the Secretary of the Association. If an Owner of a Lot does not so register, the Association shall be under no obligation to recognize his privileges of being a member. In no event shall an Owner of a Lot avoid personal responsibility for the obligations of being a member, including the payment of assessments, from his or her failure to register.

2.3. Prohibition of Assignment. The interest of a member in the Association assets or obligations cannot be transferred or encumbered except as an appurtenance to his Lot.

### ARTICLE III

#### Members' Meetings and Voting

3.1. Place. Meetings of the members shall be held at such place within the Community or within Buncombe County, North Carolina, as may be designated from time to time by the Executive Board of the Association (the "Board").

3.2. Annual Meeting. The members shall meet at least once each year in November the day being specified in the notice of such meeting given pursuant to Section 3.4 below. At each annual meeting the members may transact any business properly coming before them.

3.3. Special Meetings. Special meetings of the members may be called at any time by the President or by a majority of the Board, and shall be called and held within sixty (60) days after written request thereof signed by Qualified Voting Members of the Association as defined below entitled to cast at least fifty-one percent (51%) of the total votes in the Association is delivered to any officer or Director of the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

3.4. Notices. Notice of all meetings of the members, stating the time and place, and accompanied by a complete agenda thereof, shall be given by the President or Secretary to each member. Such notice shall be in writing, and shall be hand delivered or sent prepaid by United States mail to the members at the addresses of their respective Units and to other addresses as any member may have designated to the President or Secretary as it appears on the records of the Association, at least thirty (30) days in advance of any annual or special meeting. Notice shall be deemed delivered when deposited in the United States mail addressed to the member at his address for the respective Lot and/or as it appears on the records of the Association. The Association may vote or transact business on any matter at an annual meeting whether or not specific notice of said item had been given in the notice of the annual meeting. However, for special meetings, only items which were included in the meeting's notice to members can be voted on. Notwithstanding the above, notice to the Qualified Voting Member shall be sufficient notice for any Lot under the Declaration or the Bylaws and such notice shall be imputed to any remaining owners of the applicable Lot.

3.5. Quorum; Adjournment if no Quorum. A quorum shall consist of Qualified Voting Members present, in person or by proxy, entitled to cast at least sixty-seven percent (67%) of the total votes in the Association. If a quorum is not present, the meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement for the next meeting called due to the lack of a quorum shall be fifty (50%) percent of the total votes in the Association.

3.6. Vote. Except for Units owned by the Declarant, each Unit is entitled to one (1) vote. Prior to the expiration of the Declarant Control Period, Declarant is entitled to cast two (2) votes for every Lot that Declarant owns. The reference in the Bylaws and the Planned Community Act to the number of votes allocated in the Association shall include the votes the Declarant is entitled to vote as provided above.

3.7. Manner of Casting Votes. Votes may be cast in person, by proxy or by ballot. A proxy must be in writing, be signed by all owners of the Lot, the votes of which are subject to the proxy, be given only to another member, and be filed with the Secretary on or before the meeting. A proxy shall be valid until revoked in writing by all Owners of such Lot or by the attendance and announcement to the person presiding over the Association meeting of all Owners of such Lot. A proxy should denote the vote desired on a specific issue and/or general authorization to the proxy holder to vote according to his discretion. A proxy is void if not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term. A ballot, if application, shall be on a form proscribed by the Board.

3.8. Required Votes. All questions shall be decided by a majority of the votes cast by Qualified Voting Members on the question, unless the provisions of applicable law, the Declaration or these Bylaws require a greater vote.

3.9. Action by Members Without Meeting. Any action that may be taken at a meeting of the members, may be taken without a meeting if such action is authorized in writing setting forth the action taken and is signed by all members, or if such action is taken in any other manner permitted by law.

3.10. Prohibition of Cumulative Voting. There shall be no cumulative voting.

3.11. Declarant Control Period. "Declarant Control Period" shall mean the time specified in the Declaration related to Declarant Control and ability to exercise special rights.

3.12. Qualified Voting Member. For purposes of these Bylaws, "Qualified Voting Member" shall mean a member who is authorized to vote for a Lot or is otherwise designated as the Voting Member for a Lot as set forth in 2.1 above and whose Lot is not disqualified from voting as provided in Article III, Section 1(e) of the Declaration for delinquent assessments or other violations of the Declaration.

3.13. Majority Defined. For purposes of these Bylaws, the term "majority" shall mean those votes totaling more than fifty percent (50%) of the votes cast by Qualified Voting Members or of the Directors.

3.14. Pre-condition to Suits Against Declarant. The affirmative vote of no less than two-thirds (2/3) of all votes by Qualified Voting Members entitled to be cast by the Association shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Planned Community development or any part thereof; or (2) assert a claim against or sue Declarant.

#### ARTICLE IV

##### Directors

4.1. First Board. The first Board shall consist of three (3) persons, whose names are set forth as follows:

4.2. Number and Qualifications of Directors. The Board shall consist of a minimum of three (3) natural persons, as determined by Declarant during the Declarant Control Period (subject to Section 4.3 below), and thereafter at any annual meeting by the Members. Each Director shall be a Lot Owner or the individual nominee of a Lot Owner which is other than an individual.

4.3. Transition of Declarant Control. Pursuant to Section 47F-3-104 of the Act, not later than 60 days after conveyance of twenty-five percent (25%) of the Lots (including Units which may be created pursuant to Special Declarant Rights) to Lot Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be elected by Lot Owners other than the Declarant. Not later than 60 days after conveyance of fifty percent (50%) of the Lots (including Lots which may be created pursuant to Special Declarant Rights) to Lot Owners other than a Declarant, not less than thirty-three percent (33%) of the members of the Board shall be elected by Lot Owners other than Declarant. After the expiration of the Declarant Control Period, the Lot Owners shall elect all the members of the Board.

4.4. Election of Directors. For each Board member to be elected by the Members as provided in Section 4.3 above, such election shall take place at the annual meeting of the Association. The Members shall elect the Directors by a majority of the votes cast in the election.

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4.5. Term. After the expiration of the Declarant Control Period, the terms of the Directors shall be staggered so that at least one (1) but not more than three (3) Directors are elected at any one meeting and so that no Director's term is less than neither one (1) year nor more than three (3) years. The Directors shall establish rules to implement the provisions of this section. Once elected, a Director shall hold office until his successor has been duly elected and has qualified.

4.6. Removal. Any Director may be removed, with or without cause, by a vote of the members entitled to cast at least fifty-one percent (51%) of the total votes in the Association, at a special meeting called for such purpose, and a successor may then be elected by the members to serve for the balance of the removed Director's term. Any Director may be removed, with or without cause, by the Declarant during the Declarant Control Period.

4.7. Vacancies. Any vacancy in the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.

4.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, email, facsimile, or telegraph, at least seventy-two (72) hours prior to the meeting.

4.9. Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request therefore signed by two (2) Directors is delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours' notice of such special meeting shall be given personally or by mail, telephone, email, facsimile, or telegraph to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

4.10. Quorum; Adjournment if No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

4.11. Manner of Acting. Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration or these Bylaws.

4.12. Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by all Directors.

4.13. Compensation of Directors Restricted. Directors shall receive no compensation for their services but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

4.14. Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law, applicable statutes, the Act, the Declaration, the Articles, and these Bylaws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, the Articles, and these Bylaws, and shall include, but not be limited to, the following:



following:

- (a) To prepare and provide to members annually, a report containing at least the following:
  - (i) A statement of any capital expenditures in excess of two percent (2%) of the current budget or Five Thousand Dollars (\$5,000.00), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.
  - (ii) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.
  - (iii) A statement of the financial condition of the Association for the last fiscal year.
  - (iv) A statement of the status of any pending suits or judgments in which the Association is a party.
  - (v) A statement of the insurance coverage provided by the Association.
  - (vi) A statement of any unpaid assessments payable to the Association, identifying the Unit and the amount of the unpaid assessment.
- (b) To adopt and amend budgets and to determine, and collect assessments to pay the Common Expenses.
- (c) To regulate the use of, and to maintain, repair, replace, modify and improve the Common Elements.
- (d) To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof.
- (e) To enforce the provisions of the Declaration, the Articles, these Bylaws, the Act, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.
- (f) To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these Bylaws, or the Act, to be done by the Board or the members. Notwithstanding the foregoing, the Property, including each Unit, shall at all times be managed by a single managing agent. The single managing agent shall not have authority to lease any part of a Lot without the approval of the Lot Owner.
- (g) To hire and terminate agents and independent contractors.
- (h) To defend, intervene in, or settle any litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Lot Owners on matters affecting the Community, the Common Elements, or more than one Lot. Anything regarding the community as a whole must have at least sixty-seven percent (67%) of the total votes in the Association. No lawsuit can be filed against the Developer or Contractor without at least sixty-seven percent (67%) of the total votes in the Association.
- (i) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.

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- (j) To borrow money for the maintenance, repair, replacement, modification or improvement of Common Elements and to pledge and pay assessments, and any and all other revenue and income, for such purpose.
- (k) To buy Lots, in foreclosure of an assessment lien, or at any other time or for any other reason, and to sell, lease, mortgage, and otherwise deal in Lots from time to time owned by the Association.
- (l) To impose and receive payments, fees and charges for the use, rental or operation of the Common Elements other than the Limited Common Elements, except for elevators, stairways, hallways and other portions of the Common Elements which provide access to the Lots.
- (m) To grant leases, licenses, concessions and easements through and over the Common Elements.
- (n) To impose and collect reasonable charges, including reasonable costs and attorneys' fees, for the evaluation, preparation and recordation of amendments to the Declaration, resale certificates required by Section 47F-3-115 of the Act, or certificates of unpaid assessments.
- (o) To provide for indemnification of the Association's officers and Directors and maintain officers' and Directors liability insurance.
- (p) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, these Bylaws, or the rules and regulations.

#### ARTICLE V

##### Officers

5.1. Designation of Officers. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer. During the Declarant Control Period, officers do not have to be members or residents of North Carolina. Officers may include the Declarant or a representative of Declarant. After the Declarant Control Period, each officer shall be an Owner of a Lot or the individual nominee of an Owner of a Lot which is other than an individual. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association. The Board may elect an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

5.2. Election of Officers. Officers of the Association shall be elected by the Board. Elections shall be held every two (2) years at the first meeting of the Board held after the annual meeting of the members. The first Board shall elect officers as soon as practicable after filing of the Declaration.

5.3. Term. Each officer shall serve until his successor has been duly elected and has qualified.

5.4. Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

5.5. Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

5.6. Powers and Duties of Officers.

- (a) President. The President shall be the chief Executive officer of the Association and shall see that all actions and resolutions of the Board are carried into effect.
- (b) Vice President. The Vice-President shall perform such duties of the President as shall be assigned to him by the President, and in the absence of the President shall perform the duties and functions of the President.
- (c) Secretary. The Secretary shall keep the minutes of all meetings and actions of The Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.
- (d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all monies and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

5.7. Execution of Agreements, Etc. All agreements, deeds, mortgages, or other instruments shall be executed by the President or Vice President with an attest by the Secretary (or Assistant Secretary if appointed), or by such other person or persons as may be designated by the Board.

5.8. Compensation of Officers Restricted. No officer shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

## ARTICLE VI

### Indemnification of Directors and Officers

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the North Carolina General Statutes, as now enacted or hereafter amended. In addition, the Association is authorized to maintain Officers and Directors Liability Insurance.

## ARTICLE VII

### Fiscal Management

7.1. Depository. The Board shall designate a depository for the funds of the Association, and may change such depository at any time. Withdrawal of funds from such depository shall be only by checks signed by any two (2) officers of the Association, or as authorized by the Board.

7.2. Fiscal Year. The Fiscal Year of the Association shall run from \_\_\_\_\_ until \_\_\_\_\_ of any given calendar year, provided that the Board, from time to time, by resolution, may change the Fiscal Year to some other designated period.

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## ARTICLE VIII

### Assessments

8.1. Obligation of Members to Pay Assessments: Amount of Levy. Each Owner of a Lot as defined in the Declaration shall be personally and severally liable for an assessment as provided in Article V of the Declaration.

8.2. Allocation of Common Surplus. Any common surplus, including funds in reserve accounts, may be allocated to each Unit in accordance with its percentage of the share of assessments, and, if allocated, may be paid to the Owner of a Unit or credited against that Unit's share of Common Expenses subsequently assessed. Notwithstanding the above, the Board shall retain the authority to apply said surpluses to any current Fiscal Year expenditures in order to satisfy the exempt function income qualification for nonprofit corporations under Section 528 of the Internal Revenue Code.

8.3. Preparation of Budget and Levying of Assessment. For each Fiscal Year, beginning with the Fiscal Year commencing \_\_\_\_\_, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. Within 30 days after adoption of any proposed budget, the Board shall provide the members of the Association with a summary of the budget and a notice of the meeting to consider ratification by the membership of the budget, including a statement that the budget may be ratified without a quorum. There shall be no requirement that a quorum be present at the meeting, annual or special, when the budget is considered for ratification. The budget shall be ratified unless at that meeting a majority of all the members of the Association entitled to vote rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the members shall be continued until such time as the members ratify a subsequent budget proposed by the Board. After the ratification of the budget by the membership as provided above, the Board shall give each member notice of the assessment made against that member's Unit based upon such budget and may also state the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notice. Provided, however, that the first budget after filing of the Declaration and the conveyance of the first Lot within Community shall be prepared and adopted by the Board only for the balance of the then Fiscal Year of the Association.

8.4. Assessment A Lien. Every assessment shall constitute a lien upon each Lot assessed from the date the assessment is levied, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against that Unit and (ii) liens and encumbrances recorded before the recordation of the Declaration.

8.5. Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Payments shall be made to the Association, or as the Board may from time to time otherwise direct. Unless the notice states contrary, annual Assessments are typically due and payable within thirty (30) days of the date of the Assessment.

8.6. Special Assessments. In addition to the assessments levied pursuant to Section 8.3., the Board may levy special assessments at such other and additional times as in its judgment are required for:

- (a) Alterations, restoration and reconstruction of Common Elements and its facilities.
- (b) Improvements, acquisitions and additions to the Common Elements.
- (c) Payment of costs and expenses incurred in curing defaults pursuant to Sections 9.1. and 9.3. hereof.

The Board shall provide to its members a summary of the proposed special assessment and notice of a meeting to ratify the special assessment at least 30 days after mailing of the summary and notice. A quorum must be present at a meeting where the special assessment is to be considered by the members. The special assessment shall be deemed ratified unless at the meeting a majority of all the members entitled to vote rejects the special assessment. Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

8.7. Failure to Prepare Budget and Levy Annual Assessment; Deficiencies in Procedure. The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.3, each member shall continue to pay the assessment then previously levied pursuant to Section 8.3 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

8.8. Assessment Roll; Certificate. All assessments shall be set forth upon a roll of the Lots which shall be available in the office of the Association for inspection at all reasonable times by members and Security Holders, and their duly authorized representatives. Such roll shall include, for each Lot, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Lot Owner, or an authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against the Lot. The certificate shall be furnished within fourteen (14) business days after receipt of the request and shall be binding upon the Association and all Lot Owners. For such certificate a reasonable fee may be charged by the Board. All Owners of Lots acknowledge that such notice provided in an assessment roll or certificate shall not constitute a violation of any state or federal unfair debt collection laws.

8.9. Default and Enforcement. If any assessment, or installment thereof, remains delinquent for thirty (30) days, then that assessment, and all other assessments then a lien against that Lot, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided in the Planned Community Act. The Board shall have the authority, in cases of delinquency, to accelerate assessments through the end of the applicable fiscal year. All fees, late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

In addition to the foregoing, and without waiving its lien, the Association may sue to obtain a money judgment for the amount of any delinquent assessment, or installment thereof, together with interest, and the members so sued and liable for such assessment shall pay all costs of collection, including reasonable attorneys' fees.

The Association also shall be entitled to suspend the right of a defaulting Lot Owner to use the Common Elements (except access to the Lot) and its facilities until the delinquency is cured.

The remedies noted herein for default on assessments shall include, without limitation, any and all remedies set forth in the Declaration or in the Planned Community Act. The failure of the Association to enforce any assessment delinquency shall not constitute a waiver or abrogation of the right of the Association or its agents to enforce such delinquency in the future, irrespective of the number of breaches thereof that may have occurred by the member regarding assessments.

8.10. Interest on Delinquent Assessments. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but all sums delinquent more than thirty (30) days shall bear interest at the rate of eighteen percent (18%) per annum or as set forth in the notice levying the assessment (but not exceeding the rate of interest allowed by law) from the date of the delinquency until paid. All payments upon account shall be applied first to interest and then to the assessment, or installment

thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

8.11. Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by any specific provision of these Bylaws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the Common Elements; costs associated with the maintenance, repair and improvement of the Common Elements; premiums for any and all insurance maintained by the Association, including any deductible or coinsurance amount not covered by insurance; utility charges not charged directly to Lot Owners; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 4.13(g) hereof; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements by, or incurred by the Association as a result of the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Elements, or any part of either thereof, is or may be subject including, but not limited to amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VI hereof.

## ARTICLE IX

### Compliance, Enforcement, Fines and Penalties, Other Than Assessment Liens

9.1. Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration, these Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any Lot Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Lot Owner, or by any person or class of persons adversely affected. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs with a maximum cumulative fine of five hundred dollars (\$500.00). Also, if any member fails to perform any obligation under the Act, the Declaration, these Bylaws, the Articles or such rules and regulations as hereinafter promulgated, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his Lot, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Lot owned by such defaulting member. The Association also shall be entitled to suspend the right of a defaulting Lot Owner to use the Common Elements and its facilities until the default is cured.

9.2. Notice of Default and Failure to Cure. In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, a written notice specifying the nature of the default or failure, the cure thereof, and the time within which the cure shall be affected. Within the time limit specified in the notice, the defaulting member may cure the default or failures specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and Board has made its determination and served upon or mailed the same to the defaulting member. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the

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defaulting member a copy of its determination. A violating party shall have thirty (30) days to appeal a decision of the Board to a court of law and failure to file said appeal within thirty (30) days after receipt of the determination shall bar any challenges or any causes of action brought afterwards by said party. The Board's finding of default shall be conclusive in a case of a party's failure to appeal within the above prescribed time. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall serve upon or mail to the defaulting member a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief. The Board may appoint an adjudicatory panel to hear and decide the matters referenced to in this subsection and in doing so, the Board may reserve unto itself the role of an appellate body.

9.3. Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in Section 9.2. hereof, where the default is a structure, thing, or condition existing in or on the premises of the member's Lot, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the member's Lot in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefore as provided in Section 9.1. hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

9.4. Injunction. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 9.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

9.5. Recovery of Attorneys' Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court with interest thereon at the highest rate allowed by law at the time the costs are incurred, from the dates such costs are incurred until paid.

9.6. Nonwaiver of Covenants. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these Bylaws, the Articles, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

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## ARTICLE X

### Amendment

During the Declarant Control Period, the power to alter, amend, or repeal the Bylaws or adopt new Bylaws shall be vested in the Board with Declarant approval being necessary for any particular change. After the Declarant Control Period has expired, the amendment of Bylaws or adoption of new Bylaws can only occur at a regular meeting of the members and shall require an affirmative vote of eighty percent (80%) of the Qualified Voting Members present in person or by proxy at said meeting to such changes. Changes to the Bylaws are not required to be recorded in the Buncombe County Registry. A copy of any amendments to the Bylaws shall be kept on file with the Secretary of the Association.

## ARTICLE XI

### General Provisions

#### 11.1. Rules and Regulations.

(a) By the Board: Effective Date. The Board, including the first Board, may promulgate from time to time such Rules and Regulations as it deems reasonable and necessary governing the administration, management, operation and use of the Common Elements so as to promote the common use and enjoyment thereof by Lot Owners and Occupants and for the protection and preservation thereof. In addition, the Board may adopt such Rules and Regulations as it deems reasonable and necessary with respect to Lots to provide for the common good and enjoyment of all Lot Owners and Occupants, including, without limitation, the right to adopt such restrictions with reference to tenants and leases. In the case of a conflict between the Declaration, the Bylaws or the Rules and Regulations, the more restrictive provision controls. Any Rule and Regulation that applies to the use of a Lot shall not become effective until after thirty (30) days has expired from the date of posting of notice of the Rule and Regulation in a conspicuous location at the offices of the Association or the date that notice of such Rule and Regulation has been placed in the mail to all Qualified Voting Members to the addresses on file with the Association as provided in Article II above. This effective date requirement for Lot restrictions shall; not apply to any emergency rule making as determined in the Board's discretion. In case of emergencies or for regulations pertaining to Common Elements, the applicable Rule and Regulation shall apply on the date of adoption.

(b) By the Association. After the Declarant Control Period has expired, any such Rule or Regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by a majority of the members represented in person or by proxy at an annual or special meeting of the members. Any such act of the members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

(c) Uniform Application. All rules and regulations shall be equally and uniformly applicable to all Lot Owners and their Occupants, but need not be equally and uniformly applicable if it is determined that such unequal or non-uniform application is in the best interest of the Association or if equal and uniform application is not practicable.

(d) Copies Furnished. Copies of all such rules and regulations and any amendments thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to members at the office of the Association. However, failure to furnish, or post, or make available, such rules or regulations shall not affect in any way their validity or enforceability.

11.2. Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceeding when not in conflict with the Declaration, these Bylaws, the Articles,



the Corporation Act, the Planned Community Act or any statutes of the State of North Carolina applicable thereto. The President of the Association shall have the authority to appoint a parliamentarian.

11.3. Conflict; Severability. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control unless otherwise stated above. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

11.4. Notices. Whenever in the Declaration, the Act or these Bylaws it shall be required or permitted that notice or demand be given or served on the Association or a Lot Owner or other party entitled to notice, such notice or demand shall be given in writing by and mailed, postage prepaid, to the addresses on file with the Association. Unless otherwise provided above, all notices or demands provided under the terms of the Declaration, the Corporation Act, the Planned Community Act or these Bylaws shall be effective the earlier of: i) three (3) days after mailing as provided above; ii) when actually received by a party entitled to notice.

THESE BYLAWS adopted and approved at a duly called meeting of the Board of Directors, this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

COPY

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Doc ID: 02225380007 Type: CRP  
Recorded: 10/27/2009 at 04:04:31 PM  
Fee Amt: \$32.00 Page 1 of 7  
Workflow# 0000014710-0002  
Buncombe County, NC  
Otto W. DeBruhl Register of Deeds  
BK 4734 PG 1709-1715

Prepared by and return to:  
Tucker Law Firm Box # 23168-B South Liberty Street Asheville, NC 28801

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

**FIRST AMENDMENT TO THE VILLAGE AT BRADLEY BRANCH TOWNHOMES  
DECLARATION OF PLANNED COMMUNITY**

This First Amendment to the Village At Bradley Branch Townhomes Declaration of Planned Community (Herein "First Amendment to Declaration") is made this 26 day of October, 2009 by Bradley Branch Developers, LLC, (Herein referred to as the "Declarant"), a North Carolina limited liability company, pursuant to the provisions of The Planned Community Act as set forth in Chapter 47F of the North Carolina General Statutes (Herein "Act"). Branch Banking & Trust Company (hereinafter "Bank"), as beneficiary of the Deed of Trust recorded in Buncombe County Book 4284 at Page 1745 (hereinafter "Deed of Trust"), and BB&T Collateral Service Corporation (hereinafter "Trustee"), as Trustee of the Deed of Trust join herein for the limited purpose set forth below.

COPY  
WITNESSETH:

THAT WHEREAS, on the 27th day of June, 2008, Declarant executed The Village at Bradley Branch Townhomes Declaration of Planned Community which is duly recorded on July 14, 2008 in the Office of the Register of Deeds in Buncombe County, North Carolina in Deed Book 4588, at Page 364-396 (the "Declaration");

WHEREAS, Declarant reserved in the Declaration the right to amend the Declaration pursuant to Article IX, Section 2 of the Declaration to correct certain errors in the Declaration and to add Additional Property to the planned community;

WHEREAS, Declarant has constructed additional Lots with Common Elements and Limited Common Elements constructed in connection with said Lots;

Now, Therefore, Declarant does hereby modify the Declaration as follows:

1. That the property and Lots as shown on that Plat for Village at Bradley Branch (Phase 2) recorded in Buncombe County Plat Book 122 at Page 176 and in Plat Book 122 at Page

187 (Herein "Plats") are and shall be considered to be subject to the Declaration to the same extent as if said property and Lots shown on the Plats had originally been a part of and originally set forth in the Declaration.

2. The Declaration is hereby amended to change the name of the Association in Article I and throughout the entire Declaration from "The Village of Bradley Branch Homeowner's Association, Inc." to "The Village at Bradley Branch Homeowner's Association.
3. The Declaration is hereby amended by adding the Fiscal Year Term in Article VII, Section 7.2 of Exhibit C of the Declaration, said Fiscal Year to run from January 1 to December 31.
4. The Declaration is hereby amended by adding the commencing date of each Fiscal Year in Article VIII, Section 8.3 of Exhibit C of the Declaration, said Fiscal Year to commence January 1.
5. The Declaration is hereby amended by adding the date the Bylaws of the Declaration were adopted and approved, said Bylaw being adopted and approved on June 27, 2008.
6. Exhibit B of the Declaration is deleted in its entirety and the attached Exhibit B is substituted in lieu thereof

The Board of the Association joins herein, prior to expiration of the Declarant Control Period, for the limited purpose of amending the Bylaws as provided herein.

Trustee and Bank join herein for the limited purpose of consenting hereto in order to confirm that the recording hereof is acceptable to Trustee and Bank to the extent that no foreclosure of the Deed of Trust or sale under the Deed of Trust's power of sale would disturb the planned community regime and any purchase at such a sale would take the property subject to the Declaration as amended hereby.

This First Amendment to Declaration is intended to add additional Lots to the planned community, subject to the provisions of the Act and the Declaration, as amended. Except as modified by this First Amendment to Declaration, all of the terms, conditions and restrictions contained in the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed by its duly authorized member, who has signed and sealed this instrument, this the 26 day of October, 2009.

DECLARANT:

BRADLEY BRANCH DEVELOPERS, LLC

By:   
Member Manager

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that Kenneth G. Jackson personally came before me this day and acknowledged that he is a Member Manager of Bradley Branch Developers, LLC, a North Carolina Limited Liability Company, and that he, being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official stamp or seal, this the 26<sup>th</sup> day of October, 2009.

Notary Public  (SEAL) Commission Expires 6-13-2010

Theresa Hyder D'Amore, Notary Public  
Henderson County, North Carolina  
My Commission Expires 6/13/2010

COPY

ASSOCIATION:

THE VILLAGE AT BRADLEY BRANCH  
HOMEOWNER'S ASSOCIATION

By: [Signature]  
Kenneth G. Jackson, Board Member  
By: [Signature]  
Sharon Allen, Board Member  
By: [Signature]  
Suzanne Carver, Board Member

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that Kenneth G. Jackson personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 26<sup>th</sup> day of October, 2009.

Notary Public [Signature] (SEAL) Commission Expires 6-13-2010  
Theresa Hyder D'Amore, Notary Public  
Henderson County, North Carolina  
My Commission Expires 6/13/2010

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that Sharon Allen personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 26<sup>th</sup> day of October, 2009.

Notary Public [Signature] (SEAL) Commission Expires 6-13-2010  
Theresa Hyder D'Amore, Notary Public  
Henderson County, North Carolina  
My Commission Expires 6/13/2010

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that Suzanne Carver personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 26<sup>th</sup> day of October, 2009.

Notary Public [Signature] (SEAL) Commission Expires 6-13-2010

Theresa Hyder D'Amore, Notary Public  
Henderson County, North Carolina  
My Commission Expires 6/13/2010

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BANK: Branch Banking & Trust Company

By: R. Fielding Lowe Jr

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that R. Fielding Lowe Jr personally came before me this day and acknowledged that she is the Vice President of Branch Banking & Trust Company, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him/her as the act and deed of said corporation.

Witness my hand and official stamp or seal this the 26 day of October, 2009.

Notary Public Susan T. Watkins (SEAL) Commission Expires 1-7-2012



COPY

TRUSSEE ~~BB&T~~ Collateral Service Corporation

By: [Signature]

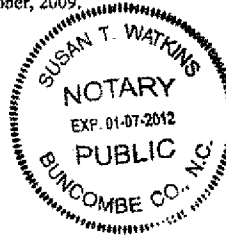
STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that David L Hayes  
personally came before me this day and being authorized to do so, executed the foregoing on  
behalf of BB&T Collateral Service Corporation, as Trustee, by authority duly vested.

Witness my hand and official stamp or seal, this the 26 day of October, 2009.

Notary Public Susan T. Watkins SEAL

my commission expires - 1-7-2012



COPY

Exhibit B

LYING IN LIMESTONE TOWNSHIP, BUNCOMBE COUNTY, NC

Being all of that 5.027 acres tract or parcel shown as The Village at Bradley Branch (Phase 2), recorded in Plat Book 118 at Page 129, and Plat Book 122 at Page 176 and Plat Book 122 at Page 187 in the Office of the Register of Deeds of Buncombe County, NC.

COPY



Workflow No. 0000199270-0001



Doc ID: 025851420022 Type: CRP  
Recorded: 12/13/2013 at 04:37:52 PM  
Fee Amt: \$54.00 Page 1 of 22  
Workflow# 0000199270-0001  
Buncombe County, NC  
Drew Reisinger Register of Deeds

BK 5171 PG 886-907

Prepared by (and return to): Goosmann Rose Colvard & Cramer, P.A (#13-3737 GFG/LL/cm)  
Box 81

**RESTATED DECLARATION OF PLANNED COMMUNITY  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE VILLAGE AT BRADLEY BRANCH TOWNHOMES**

This Restated Declaration Of Planned Community Covenants, Conditions And Restrictions for The Village At Bradley Branch Townhomes (herein "Declaration") made as of the 11 day of DECEMBER, 2013 by and between Bradley Branch Investments, LLC, a North Carolina limited liability company (herein "Developer") and all Future Owners of Lots or other property in The Village at Bradley Branch Townhomes as shown on those plats recorded in Plat Book 118, at Page 129, in Plat Book 122, at page 93, in Plat Book 122, at Page 155, in Plat Book 122, at Page 187, and in Plat Book 124, at Page 138 of the Buncombe County, NC Register's Office (collectively herein "Plat").

**Witnesseth:**

**That Whereas**, Developer is the owner of 5.027 acres, more or less, being The Village at Bradley Branch Townhomes as shown on the Plat, and any other adjacent property as may additionally become a part of Bradley Branch Townhomes as determined by the Developer as being subject to this Declaration (Property"); and

**Whereas**, the Developer, for the protection and benefit of all persons who may hereinafter become owners of Lots or other property located within the Community, desires that the Property be subject to limitations and restrictions, including without limitation the **REGULATION AND/OR PROHIBITION OF THE DISPLAY OF POLITICAL SIGNS** pursuant to N.C.G.S. 47F-3-121. These covenants are to run with the land and be binding upon all parties purchasing Lot or other property within the Community and all persons claiming by, through or under the Developer until December 1, 2022 at which time said covenants shall automatically be

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extended for successive periods of (10) years unless by altered or extinguished by a vote of a two-thirds majority (67%) of voters in the Community; and

**Whereas**, prior document recordings for The Village at Bradley Branch Townhomes and the Property are as follows: (1) The Village at Bradley Branch Townhomes Declaration of Planned Community, recorded in **Record Book 4588, at Page 364** of the Buncombe County, NC Register's Office (herein "Registry"), dedicated and made pursuant to the provisions of the North Carolina Planned Community Act set forth in Chapter 47F of the General Statutes of North Carolina; (2) First Amendment to The Village at Bradley Branch Townhomes Declaration of Planned Community, recorded in **Record Book 4734, at Page 1709** of the Registry; (3) Supplement and Second Amendment to Declaration Of Planned Community for The Village at Bradley Branch Townhomes, recorded in **Record Book 5033, at Page 1542** of the Registry; and (4) Assignment of Declarant's Rights for The Village at Bradley Branch Townhomes, recorded in **Record Book 5102, at Page 1866** of the Registry (collectively herein "Prior Documents"); and

**Whereas**, the Property is a community composed townhomes, all of which share common elements, community roads and any other community facilities or amenities as may be added in the sole discretion of the Developer (with the Property and the aforementioned amenities collectively referred to herein as the "Community"); and

**Now, Therefore**, the Developer does hereby make the following declarations as to the limitations, covenants, conditions and restrictions to which the Community shall be and are hereby subjected.

#### **ARTICLE I** **Definitions**

- 1.1 "Act" shall mean and refer to the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes.
- 1.2 "Community Association" shall mean and refer to The Village at Bradley Branch Homeowner's Association, Inc., a nonprofit corporation, organized under the laws of the State of North Carolina, its successors and assigns.
- 1.3 "Board" shall mean and refer to the Board of Directors of the Community Association.
- 1.4 "Bylaws" shall mean and refer to Bylaws of the Community Association as determined (or thereafter amended) by the Board.

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- 1.5 "Common Elements" shall mean and refer to: (i) private roads designated on any plat of the Community or any portion of such Community thereafter recorded by Developer, as well as any other private road constructed by the Developer serving the Community or any property adjoining the Community; (ii) the entrance area as shown on such Plat(s); (iii) any recreational or other facilities for use by the residents of the Property, as such facilities may be determined and added in the sole discretion of the Developer, as shown the Plat and any supplemental or subsequent plat filings of any portion of the Property; (iv) any other property designated as such by the Developer; and (v) any real estate owned by the Community Association.
- 1.6 "Community" shall mean and refer to the Community composed of townhomes sharing the Common Elements (including Community roads) located on the Plat and as shown on any subsequently filed Plat of such real property described as hereafter recorded by Developer. The Developer shall not be deemed to subject any other property which the Developer may now or hereafter own or acquire to the restrictions set forth herein until such time as a recorded instrument specifically subjecting such property is recorded in the Buncombe County Registry of Deeds. Developer specifically reserves the right to subject any other adjacent property or properties (which the Developer may now own or which Developer may hereafter acquire) to the restrictions set forth herein. Each townhome within the Community may be governed in more detail by rules promulgated by the Board.
- 1.7 "Declaration" shall mean this Restated Declaration Of Planned Community Covenants, Conditions And Restrictions for The Village At Bradley Branch Townhomes as supported by the Prior Documents and intended to stand as a restatement of all such covenants, conditions and restrictions applicable to the Community under the Prior Documents, as the same may be released, amended or changed, either in whole or in part, as provided herein.
- 1.8 "Developer" shall mean Bradley Branch Investments, LLC, a North Carolina limited liability company, or its successors and/or assigns, including any person which succeeds to the Special Developer Rights set forth herein and in the Act. Any consent obtained from the Developer pursuant to these restrictions must only be obtained from Bradley Branch Investments, LLC, or its successor(s), in its capacity as Developer.
- 1.9 "Directors" shall mean and refer to the members of the Board of the Community Association.
- 1.10 "Lot" shall mean and refer to any parcel of land within the Community which shall be conveyed to an Owner and as shown the Plat or on any plat hereinafter recorded by

Developer of any part of the Community and all other Lots which may be added pursuant to any other expansion right of Developer as described herein, and designated for separate ownership or occupancy by a Lot Owner.

- 1.11 "Owner" shall mean and refer to the Developer or other person or entity who owns title to any Lot, but does not include a person having an interest solely as security for an obligation.
- 1.12 "Member" shall mean and refer to each Owner or Owners of a Lot within the Community who shall also then be a member of the Community Association for such period of ownership. If a Lot is owned by more than one person, then such persons collectively shall be the Member and shall be entitled to vote only those voting shares allocated to such Lot. Each Lot shall have one vote with respect to the Community Association.
- 1.13 "Restrictions" shall mean and refer to this Declaration, as same may be released, amended or changed, either in whole or in part, as provided for herein.
- 1.14 "Special Developer Rights" shall mean and refer to those rights defined in Chapter 47F-1-103(28) of the Act as the same are reserved herein and in the Bylaws for the benefit of Developer.
- 1.15 "Property" shall mean and refer only to that certain real property that 5.027 acres, more or less, known as The Village at Bradley Branch Townhomes, Phase II, as shown on the plat recorded in Plat Book 118, at Page 129 of the Registry and as shown on any plat of such real property described as hereafter recorded by Developer. The Developer shall not be deemed to subject any other property which the Developer may now or hereafter own or acquire to the restrictions set forth herein until such time as a recorded instrument specifically subjecting such property is recorded in the Registry. The Developer specifically reserves the right to subject any other adjacent property or properties which the Developer may now own or which Developer may hereafter acquire to the restrictions set forth herein.

## ARTICLE II

### Submission of Property to the Act and Creation of a Planned Community

- 2.1 Submission of the Property and Creation of the Community: Pursuant and subject to the terms and provisions of the Act, Developer hereby identifies and commits the Property to operate as a planned community subdivision initially comprised of the Property. Developer hereby submits all of the Community to the Act and the terms of this Declaration.

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2.2 Name: The name of the Community created hereunder is The Village at Bradley Branch Townhomes.

2.3 Reservation of Special Developer or Developer Rights: Developer hereby reserves unto itself and its successors in interest as Special Developer those Developer Rights as follow:

- (a) Those Special Developer and Developer Rights as set forth in the Act; and
- (b) The right, during the Developer's Control Period, to modify, amend, change, vary or release all or any part of these Restrictions; and
- (c) The right to redesignate a previously designated Lot as an easement or right-of-way for access to adjoining property whether now or hereafter owned by such Developer; and
- (d) The right, during the Developer's Control Period, to establish supplemental rules and restrictions for the Community in order to govern the same in more detail.

### ARTICLE III

#### Common Elements Ownership and Maintenance

3.1 Owner Easements of Enjoyment: Every Owner shall have the right of ingress to and egress from the Common Elements, together with the right of enjoyment in and to the Common Elements, which rights shall be appurtenant to and shall pass with the title to every Lot.

3.2 Delegation of Use: Any Owner may delegate their rights of enjoyment of the Common Elements to the members of their family, their tenants, contract purchasers who reside on the Lot, or the guests of the Owner who are currently visiting the Owner. An Owner who has delegated rights to the Common Elements to their tenant shall not in addition to their tenant have rights to the Common Elements.

3.3 Rules and Regulations: The Board shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Elements, including but not limited to: (a) the right to limit the number of guests using such improvements or to establish a maximum use capacity; (b) the right to suspend use of such areas for failure to comply with use rules or for failure to pay Community Association assessments; (c) the right to charge reasonable admission or other use fees to fund operational expenses; (d) the right to permit the reasonable reservation of such facilities for exclusive use; (e) the right to assist in the management and operation of such facilities; (f) the right to renovate or remove any such improvements within the Common Elements. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board, shall be recorded in its minutes. which shall be maintained at the office of the person or entity managing the Common Elements on behalf of the Community Association and available to the members for inspection during normal business hours, or at the designated office of the Community Association, if there is no property manager.

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3.4 Leasing Common Element Facilities: Subject to the ordinances of Buncombe County, the Board shall have the power to lease the use of any Community recreational or other facility for functions or special events, and may charge reasonable admission or other fees for such use.

3.5 Operating Common Element Facilities: The Board shall have the power to limit the number of guests, to regulate hours of operation and behavior, and to curtail any use or uses it deems necessary for either the protection of the facilities or the peace and tranquility of adjoining Owners with regard to the recreational and other Community facilities located on the Common Elements. The Board shall promulgate rules regarding use of the recreational and other Community facilities, including without limitation rules regulating unsupervised use of such facilities by children. All expenses relating to the maintenance and insurance of improvements to the Common Elements shall be paid by the Community Association from dues assessments. In no event shall any Owner be exempt from, or entitled to abatement of any assessments by reason of non-use of such improvements of facilities within the Common Elements.

3.6 Developer's Conveyance of Title to Common Elements: At such time as it deems appropriate but not later than at such time that all of the Lots within the Community are sold and title conveyed, Developer shall convey fee simple title to the Common Elements to the Community Association. At the time of conveyance the Common Elements shall be conveyed in its "as is" condition, and the Community Association shall accept the same in its then condition and the Developer shall have no obligation to conduct repairs or maintenance to the Common Elements. The Community Association shall accept the conveyance of all such Common Elements pursuant to this section.

3.7 Mortgaging the Common Elements: The Community Association shall have the power to borrow money for the purpose of improving the Common Elements, and pursuant thereto, to pledge the Common Elements or any portion thereof that it owns to a Deed of Trust; provided, however, that the execution of such Deed of Trust shall require the same approval of the membership which is required for special assessments for capital improvements.

3.8 Developer Use of Community Facilities: Developer has the right to the use of any Community recreational or other facility during the Developer Control Period for public, private and exclusive functions in the exclusive discretion of the Developer.

3.9 Storm Water Drainage System: Developer shall determine what additions or alterations shall be made to any portion or component of storm water drainage facilities on the Property and any such additions or alterations shall be in accordance government approvals or requirements. The Developer shall, prior to conveyance of the Common Elements to the Community Association, enter into a "Maintenance Agreement" with the Community Association and with

the City, County and/or other applicable regulatory authority, which shall obligate the Community Association to maintain said storm water drainage facilities as mandated by applicable government ordinance(s). The Community Association shall be obligated to accept (a) its joinder into the Maintenance Agreement and (b) all conveyances from the Developer of operational and compliant storm drainage facilities governed by the Maintenance Agreement. The storm water drainage facilities on the Property and the Maintenance Agreement shall include easements as may be reasonably necessary to carry out all maintenance, repair and replacement as required by government ordinances. Upon Developer's conveyance of the storm water drainage system the Community Association and all Owners shall be jointly and severally liable for the maintenance, repair and replacement of the system in compliance applicable ordinances. The Community Association shall assess the Owners for all costs and expenses related to the storm water drainage system.

#### **ARTICLE IV** **Land Use**

4.1 Restrictions: All Lots and the Common Elements shall be subject to the restrictions set forth herein, in addition to any other rules, restrictions or declarations which may govern in more detail.

4.2 Residential Use: All Lots shall be used for, improved for, and devoted exclusively to single-family residential use only and common recreational purposes auxiliary thereto and for no other purpose. Only one family may occupy a Lot as a principal residence at any one time.

4.3 Construction or Alteration: No alteration or construction of the external area of any improvements on any Lots or in or upon any portion of the Common Elements shall be undertaken or allowed except at the direction of and with the express written consent of the Board.

4.4 Offensive or Annoying Activity or Nuisance: No immoral, illegal, obnoxious or offensive activity shall be carried on, in or upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to any Owner within the Property. In the use of the Property, all applicable governmental regulations shall be observed. The Board shall have exclusive discretion to determine whether any activity, including but not limited to: (a) the behavior of dogs or other animals (b) display of signs and decorations; (c) emissions of light, noise or odors; and (d) parking, storage and maintenance of vehicles, shall be considered as obnoxious or offensive hereunder.

4.5 Fences, Mailboxes and Antennas, Etc.: The Board may regulate or prohibit the erection of antennas, ham radio towers, fences (chainlink, stockade-type or otherwise) on any Lot. In no

event shall any chain link fencing be installed upon any Lot. Only mailboxes furnished or approved by the Developer or the Board may be used. No satellite dishes larger than one meter in diameter shall be allowed, and if reasonably feasible shall be installed on rear facing eaves or such other location such that it shall not be visible from Community roadways. No outside clothes lines are permitted.

4.6 Animals: No animals generally considered livestock may be kept on any Lot. No commercial animal raising or boarding of any type shall be permitted on any Lot. Only animals which are generally recognized as domestic pets, not to exceed a total of three (3) per dwelling (exclusive of fish, gerbils or other like caged pets, which are kept indoors at all times), may be kept and maintained upon a Lot. In no event shall more than two (2) dogs be kept on any Lot. All pets must be kept under the control of their Owner and kept in such a manner so as not to become a nuisance or any annoyance to other Owners or residents within the Community. Any pet outside the boundaries of the Lot shall be restrained by its owner and on a leash not to exceed seven (7) feet in length. Specific regulations may be promulgated from time to time by the Board, which may further restrict the type of pets to be allowed within the Community, including breeds and sizes of pets to be prohibited so as to avoid nuisances. Owners shall be responsible for collecting and disposing of all pet excrement. Any failure of an Owner to properly dispose of pet excrement shall subject such Owners to a reasonable fine as determined and assessed by the Community Association Board.

4.7 Parking: The design of the Lots currently provides for driveway parking for two cars. No parking of unlicensed, uninspected or inoperable vehicles shall be allowed on a Lot or on the Property. No overnight parking of any motor vehicles shall be allowed on streets within the Property. All vehicles shall be parked on the Owner's Lot driveway or within parking areas designated within the Community. In no event shall any vehicle be parked on any Community streets. Campers and boats may be parked in driveways within twenty-four hours before and after such time they are used. Lot residents may wash motor vehicles in their driveway. In addition, no one shall store or keep a trail bike, go cart, motorized tri-wheel bike, tractor, truck or other such motorized riding vehicle on the Property, except one pick-up truck and one or more operational automobiles and except as provided in the rules and regulations enacted by the Board. In no event shall any vehicle remain parked in designated parking areas adjacent to any Community recreational or other facility for any period in excess of six hours, nor shall any Community recreational or other facility designated parking area remain occupied during any time when such facilities are closed.

4.8 Motor Vehicles: All motor vehicles shall be maintained in proper operating condition and in a condition so as not to be a nuisance by noise, exhaust emissions or otherwise. Any motorcycle operated within the Community shall not be driven in a manner causing excessive



noise. The Board shall have exclusive discretion to determine whether any vehicle shall constitute a nuisance hereunder.

4.9 Trash Receptacles: Storage, collection and disposal of trash shall be in compliance with rules set by the Board. The Board may, in its exclusive discretion designate a specific day for trash collection, and any contracts for independent collection of trash shall specify said day for collection(s). The Board may contract for collection of trash and include the expense thereof in Assessments levied thereby.

4.10 Signs: No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted, or affixed by any Owner on any portion of the exterior or interior (if visible from the outside) of any Lot or on any portion of the Common Elements. As an exception hereto: (i) signs for Owner's names may be permitted but must be applied for and approved by the Board; and (ii) signs offering a Lot for sale or rent or identifying contractor and/or lender not exceeding three (3) square feet in size may be placed by the Owner within a dwelling window. Notwithstanding the foregoing, the Board may, in its exclusive discretion, erect signs within the Community for identification or for such other purposes as the Board deems necessary. This section shall not be construed in any way so as to regulate or prohibit the display of the flag of the United States or North Carolina pursuant to N.C. G. S. 47 F-3 § 1 21, however, this Section SHALL be construed to prohibit display of all political signs as permitted pursuant to N.C.G.S. 47F-3-121, by virtue of the statement written on the first page of this Amendment.

4.11 Trade or Business: No trade or business shall be carried on upon any Lot, but this restriction shall not prohibit a home occupation which does not cause any noxious or offensive activity and which does not significantly increase traffic within the Community.

4.12 Rentals: "Leasing" for purposes of this Declaration is defined as regular occupancy of a Lot by any person other than the Owner for which the Owner receives any consideration or benefit, including a fee, service, gratuity or emolument. The purposes of restrictions regarding Leasing is to: (i) protect the equity of the individual Owners within the Community; (ii) carry out the purpose for which the Planned Community was formed by preserving the character of the Community as a residential community of Owner-occupied dwellings and by preventing the Community from assuming the character of a renter-occupied community; and (iii) comply with the eligibility requirements for financing in the secondary mortgage market in so far as such criteria provide that a Planned Community shall be substantially owner-occupied.

4.12.A With limited exceptions, no more than twenty percent (20%) of the occupied Lots within the Community may be leased at any one time. All Lots may be leased only in their entirety; no fraction or portion may be leased. No transient tenants shall be permitted and all Lot leases are hereby required to be terms of

not less than seven (7) months, unless permitted in writing by the Board which permission is in the sole discretion of the Board. No Lots may be subleased.

- 4.12.B All leases, lessors and lessees are subject to the provisions of the Declaration and all other rules and regulations established hereunder. The Owners shall make available to their tenant copies of the Declaration and any current rules or other regulations established hereunder.
- 4.12.C All Owners shall register any and all changes in the status of a rental/leased Lot, including vacancies and the renewal of leases, with the Developer, and thereafter the Community Association, within fourteen (14) days of any change.
- 4.12.D Any lease of a Lot within the Community shall include the following provisions:
- (i) Lessor and Lessee acknowledged that the Developer and the Community Association for Bradley Branch Townhomes, Phase II (through its Board), as set forth in the Declaration for the said development, shall be third party beneficiaries of the promises made within the lease agreement for the Lot between Lessor and Lessee; and
  - (ii) Lessee agrees to comply with all of the terms and conditions of the Declaration for the Bradley Branch Townhomes, Phase II, as amended, including without limitation, all of the terms as to occupancy and use of the Lot and areas within the Community, and Lessee hereby consents that the Developer or the Community Association for Bradley Branch Townhomes, Phase II (through its Board), may seek recovery in law or in equity against Lessee for non-compliance or damages to any portion of the Community by Lessee and/or guests and invitees of the Lessor.
- 4.12.E Before a Lot can be leased within the Community Owners shall notify the Board, or their designated representative, in writing (i) requesting approval and (ii) of the form of the lease (including the names of the tenants and requirements as to dwelling insurance) to be used by the Owner so that such lease document can be assessed as to its compliance with 4.12.D above. The Community Association shall determine the number of Lots leased at that time and shall not approve any request causing the maximum limit to be exceeded. The Community Association shall give the Owner notice of its approval or rejection within ten (10) business days of receiving the request. If the Community Association, or their designated representative, has approved an Owner's request the Owner may start the process of leasing its Lot. If the Owner request is rejected due to excessive number of Lot rentals the Owner can request that the

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Community Association place the Owner's Lot rental request on the lease waiting list developed on a "first come, first serve" basis determined by the date of the postmark on Owner's mailed request to the Community Association Board or its designated representative.

## **ARTICLE V**

### **Membership and Voting Rights**

5.1 Every owner of a Lot shall be a member of the Community Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

5.2 Except as set forth in Item 5.3 below, all Lot owners, as members, shall be entitled to one (1) vote for each Lot. When more than one person holds an interest in any Lot all such persons shall be members and the vote for such Lot shall be exercised as such owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If multiple owners owning any Lot are unable to agree on their vote, their vote shall not be counted.

5.3 The Developer shall be entitled to three (3) votes for each Lot the Developer owns within the Community. These special voting rights of the Developer shall cease at the end of the Developer Control Period.

## **ARTICLE VI**

### **Assessments**

6.1 Creation of the Lien and Personal Obligation of Assessments: The Developer, for each Lot owned, hereby covenants, and every other Owner of any Lot subject to this Declaration, by acceptance of a deed therefor, whether or not expressed in any such deed of other covenant, is deemed to covenant and agrees to pay the Community Association for assessments as follow:

6.1.A Annual assessments or charges, as determined by the Board; and

6.1.B Special assessments or charges for capital improvements and unanticipated crisis or contingencies, with such assessments to be fixed, established, and collected from time to time as provided herein

The annual and special assessments on a Lot, together with interest thereon and costs of collection therefor, as provided herein, shall be a charge on each Lot and shall be a continuing lien upon the Lot upon which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees (as provided in the Act) incurred by the Community Association in collecting delinquent assessments

shall also be the personal obligations of the person(s) or entity who is the Owner of such Lot at the time when the assessment becomes or became due. The personal obligation of a Lot owner for delinquent assessments shall not pass such owner's successor or assigns in title unless expressly assumed by them, notwithstanding that the lien for delinquent assessments shall continue to encumber the Lot. In addition, the Community Association shall have all those powers provided for in the Act, including the ability to impose fines. Assessments as to subsequent purchasers shall begin as a liability to such purchasers effective upon the first day of the month following such purchasers closing on a Lot.

6.2 Developer Exclusion: Developer shall not be required to pay assessments for any Lot owned by Developer.

6.3 Purpose of Assessments: The Assessments levied by the Community Association may be used for the following purposes:

- 6.3.A for the promotion of the recreation and welfare of the residents of the Community;
- 6.3.B for the payment of ad valorem taxes and public assessments levied on the Common Elements;
- 6.3.C for the maintenance and operation of any utility systems owned or utilized by the Community Association;
- 6.3.D for the maintenance of Community streets, roads, walkways, creek banks, bridges, wetland areas, fences, and retaining walls within the Property, as well as all signs and Community lighting located on the Property or adjacent thereto;
- 6.3.E for the maintenance of the Common Elements and the cost of labor, materials and equipment necessary for the proper use, enjoyment and maintenance of the Common Elements (including without limitation, any furnishings at or within a Community Element facility);
- 6.3.F for snow removal for all streets within the Property (removal of snow from driveway and sidewalks shall be the responsibility of each individual Lot owner;
- 6.3.G for maintenance of the entrance area; provided, that it is understood that in the event that a gate is installed, said gate is not to be construed as any representation or guaranty of security to residents of the Property;

- 6.3.H for the procurement and maintenance of liability and hazard insurance in accordance with the By-Laws and the regulations of the Federal National Mortgage Association, with such liability insurance to insure the Community Association in a minimum amount of \$1,000,000.00 per occurrence, or any other appropriate insurance that the Community Association requires;
- 6.3.I for garbage removal, however, in the event that the Board shall determine not to include the provision of garbage services within the Community, then each Owner shall contract for their own garbage removal to be collected on a day as determined by the Board;
- 6.3.J for the employment of professionals such as accountants, attorneys and management firms to represent the Community Association when necessary;
- 6.3.K for maintenance of recreational of other facilities within the Community and all Common Elements;
- 6.3.L for all expenses relating to wood destroying insect treatments and certificates;
- 6.3.M for storm water drainage system maintenance, repairs, updates or alterations; and
- 6.3.N to maintain a reasonable reserve for the foregoing purposes;

6.4. Limitation on Use of Assessments: The Assessments may not be used by the Community Association or the Board to retain legal counsel or to instigate any legal action, where the total expense of such action shall exceed five thousand and no/100 dollars (\$5,000.00) without the written consent of at least sixty seven percent (67%) of the Members. Such consent shall not be required to institute an action to collect any Assessments levied pursuant to the Prior Documents or this Restated Declaration or to foreclose a lien to collect such Assessments.

6.5 Annual Assessments: Annual Assessments shall be fixed by the Board at least thirty (30) days in advance of each annual Assessment. The Board shall fix the amount of the annual Assessment against each Lot and send written notice of such assessment to each Lot owner. The due dates of such Assessments shall be established by the Board and such Assessments shall be payable on the due date, but may be collected in monthly, quarterly, or annual Assessments, as established by the Board. A delinquent account may be accelerated by the Community Association such that the entire year's Assessment becomes immediately due. Assessments as to any Lot purchased from the Developer shall be prorated for any partial month or other partial Assessment term at closing. The Community Association shall, upon demand, and for a

reasonable charge, furnish a certificate signed by an officer of the Community Association stating forth whether the Assessment for a specified Lot is paid current.

6.6 Special Assessments for Capital Improvements: In addition to the annual Assessments authorized herein, the Community Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of two thirds (2/3) of the vote of members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting.

6.7 Assessments for Reserves. In addition to the annual Assessments and special Assessments, the Community Association shall, upon closing of each transfer of a Lot from the Developer collect an initial reserve account containing minimum sum equal to two (2) months of regular Assessment, which shall be held in a reserve account at the discretion of the Community Association. This initial reserve deposit shall be supplemented thereafter as a budget item included in the annual Assessments.

6.8 Uniform Rate of Assessments: Both annual and special Assessments must be fixed at a uniform rate for all Lots as imposed by the Community Association.

6.9 Remedies for Non Payment of Assessments: Any Assessments which are not paid when due shall be delinquent. If the Assessment is not paid within sixty (60) days of the due date, the Assessment shall bear interest from the date of delinquency at the rate of 18%, or the maximum rate permitted by Law. Additionally, a late fee equal to the greater of twenty and no/100ths Dollars (\$20.00) per month or ten per cent (10%) of the amount of such Assessment shall be charged for any Assessment installment which remains due and owing and which remains unpaid for any period of thirty (30) days or longer. The Board may, at its sole discretion, waive the imposition of interest or a late fee to any delinquent Assessment. The Board may bring an action in law against the Owner personally obligated to pay the Assessment and interest or foreclose the lien created therein in the same manner as described by the laws of the State of North Carolina for foreclosure of deeds of trust. Cost and reasonable attorney fees as provided for above for any such action shall be added to the amount of such Assessment. No Owner may waive or otherwise escape liability for the Assessment provided for herein by non-use of the Common Elements, or abandonment of their Lot. In the event that an action at law results in a judgment being entered against the Owner of any Lot and in favor of the Community Association, the Community Association shall be further empowered to obtain execution on such judgment in a manner to the

extent provided for and permitted by the laws of the State of North Carolina. The Community Association may delegate collection of delinquent Assessments to a duly-appointed property manager.

6.10 Assessments of Fines for Non-Compliance: In the event that any Owner shall fail to comply with the terms of the Declaration and any other rules or restrictions hereunder, the Community Association may notice such noncomplying Owner(s) of a hearing before an adjudicatory panel appointed by the Board, in accordance with N.C.G.S. 47F-3-107.1, and shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be assessments secured by liens under N.C.G.S. 47F-3-116.

6.10 Annual Budgets: By majority vote of the Directors, the Board shall adopt an annual budget for the each year of operation which shall provide for the allocation of expenses in such a manner that the obligations imposed by this Declaration and any and all amendments hereto shall be met.

6.11 Omissions of Assessments: An omission by the Board before the expiration of any year to fix the Assessments for that or for the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligations to pay any Assessments.

6.12 Subordination of Assessment Liens to Mortgages: The lien for Assessments provided herein shall be subordinate to any mortgage or deed of trust which is a first lien on a Lot. Sale or transfer of any Lot shall not affect the viability and application of an Assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer, but shall not, however, extinguish the payment of prior Assessment amounts to the Community Association from any excess foreclosure funds above the foreclosing lender's lien. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien therefor. Nothing herein shall prevent, and any mortgagee may, at its option, pay any delinquent obligations of an Owner. The Developer or the Community Association shall notify, by certified mail return receipt requested, any mortgagees of any delinquency or any default in the presence of any obligations of an Owner prior to taking any action against such Owner which would affect the mortgage.

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## **ARTICLE VII**

### **Insurance**

In addition to insurance coverage as pertains to the Common Elements, all Owners of Lots are required to have fire and extended coverage insurance in an amount sufficient to cover the full replacement cost of their Lot improvements. All Owners shall have an affirmative obligation to provide the Developer or the Community Association with a copy of the declaration page of their current fire and extended coverage insurance policy. In the event of damage to or destruction on any Lot covered by a standard fire and extended coverage insurance policy, the Owner of such Lot shall have the affirmative responsibility of reconstructing or repairing the damage regardless of whether such Owner has such a standard fire and extended coverage insurance policy. In the event of the Owner's failure to repair or reconstruct such Lot the Community Association may, at its discretion, clean up the debris or repair the damage and add the costs thereof to the Assessment against the Lot upon which said debris is located, and collect such Assessments pursuant to the provisions of Article VI.

## **ARTICLE VIII**

### **Easements**

8.1 Easements Established: All Lots and the Common Elements within the Community shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas, telephone, cable television and electric power lines and ingress and egress and for other purposes as shall be established by the Community Association.

8.2 Road Rights-of-Way: All Lots within the Community are serviced by certain road rights-of-way described on plats to be recorded. Developer does hereby establish said rights of way as shown as private roadways, and makes no representation with respect to whether they have been constructed in accordance with current Department of Transportation specifications. As such, said roadway may not be eligible for dedication as a public road by the North Carolina Department of Transportation for inclusion in the State highway system. All future Owners, and their heirs, successors and assigns, covenant and agree that they shall be jointly responsible for the maintenance, upkeep, repair and service of such road rights of way unless and until such time as the Department of Transportation assumes the obligation for the maintenance of said road rights of way.

8.3 Encroachments and Developer's Easements to Correct Drainage: All Lots and the Common Elements shall be subject to easements for the encroachment of improvements constructed on adjacent Lots by the Developer or its predecessors to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, steps and walls. If an encroachment is created as a



result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be and remain a valid easement for such encroachment for the maintenance of the same. For a period of twenty (20) years from the date hereof, the Developer reserves a blanket easement on, over and under the ground within the Community to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety, and appearance, expressly including the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary within the discretion of the Developer. After such action is complete, the Developer shall restore the affected property to its original condition to the extent practicable. Developer shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Developer. Nothing in this section shall be deemed to impose an obligation upon Developer to maintain and correct drainage and surface water conditions.

8.4 Easements to Buncombe County and Public or Private Utilities: A perpetual easement is hereby established for county, state or public or private utilities serving the area, their agents and employees over all Common Elements hereby or hereafter established for postal and private mail delivery, garbage collection, setting, removing and reading utility meters, maintaining and replacing utility or drainage connections, or cable service, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.

8.5 Easement for Construction Purposes: Developer shall have full rights of ingress and egress to and through, over and about the Common Elements in the Property during such period of time as Developer is engaged in any construction or improvement work on or within the Community. Developer shall further have an easement for the purpose of the storage of materials, vehicles, tools, equipment, etc. which are being utilized. No owner, his guests or invitees shall in any way interfere or hamper Developer, its employees, successors or assigns, in connection with such construction, it being understood and agreed that the construction activities of Developer or its contractors or subcontractors, so far as practical, shall not interfere with the quiet enjoyment of Lots within the Community.

8.6 Utility Contracts: The Developer reserves the right to subject the Property to contracts with individual utility companies for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to such utility companies by the Community Association.

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## **ARTICLE IX**

### **Party Walls**

In addition to other terms and provisions hereof specific to the Lots provided for herein, the following additional terms shall apply:

9.1 Each wall or component of a residential dwelling upon a Lot which is built as a part of the original construction of the Lots and placed on the dividing line(s) between the Lots shall constitute a "party wall structure", and to the extent not inconsistent with the provisions of this Declaration, the general rules of law in North Carolina regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

9.2 Any portion of the party wall structure which is damaged or destroyed must be repaired, reconstructed, or replaced promptly by the adjoining Owners unless repair or reconstruction would be illegal under any law, statute or ordinance governing health and safety. The cost of reasonable repair and maintenance of the party wall structures shall be shared equally by the Owners of Lots adjoining or sharing such party wall structure(s).

9.3 If a party wall structure is destroyed or damaged by fire or other casualty, any Owner who has used the party wall structure may restore it, and if the other Owners thereafter make use of the party wall structure, such Owners shall contribute equally to the cost of restoration thereof, without prejudice, however, to the right of any such Owners to call for a larger contribution from the other under any rule of law regarding the liability for negligence or willful acts or omissions. If any Owner neglects or refuses to pay his, her or its share of the expenses, or all of the cost in the case of negligence, arising from the repair or reconstruction of the party wall structure as described herein, the other adjoining Owner(s) may, but will not be required to, undertake such repair or reconstruction and pay the share of the cost and expense of the adjoining Owner neglecting or refusing to so pay, which amount thereof shall constitute an Assessment collectible in accordance with this Declaration and shall be subject to a lien herein provided and pursuant to the Act. The right of any said Owner to contribution from any other such Owner(s) under this Article shall be appurtenant to said Owner's Lot and shall pass to successors in title.

9.4 Notwithstanding any other provision of this Article, any Owner who by his, her or its negligent or willful act causes the party wall structure to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

9.5 The Owner of any Lot may not construct, reconstruct, extend, or modify any party wall structure in any manner without the prior approval of the Board and of any other Owner(s) adjoining the said party wall structure, which such approval shall not to be unreasonably withheld.

9.6. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Owner's land and shall pass to such Owner's successors in title.

9.7. If any Owner desires to sell his, her or its Lot and in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, such Owner may request of the adjoining Owner a certification that no right of contribution exists, whereupon it shall be the duty of such adjoining Owner to make such certification immediately upon request and without charge. Where the adjoining property Owner does claim a right of contribution, the certification shall contain a recital for the amount claimed and the basis on which the claim is made.

9.8. There shall exist for the benefit of each Owner of a Lot, and their respective guests, invitees, successors and assigns, a perpetual easement for access, ingress, and egress on, over and across such portions of the other adjoining Lots reasonably necessary or desirable for the construction, repair, maintenance and replacement of the party wall structure. With respect to the whole or any portion of any party wall structure located upon an adjoining Lot, an adjoining Owner shall have an encroachment easement as described in Paragraph 9 below upon the other adjoining Lot. This construction, repair, maintenance and replacement easement shall include the right to temporarily alter, obstruct and/or block off portions of the party wall structure during construction or repair in order to avoid injury to persons or damage to the Lot(s) or other property. However, in every case of alteration, obstruction, or blocking, the Owner exercising such right shall provide, if possible, reasonable alternative means of use and access around the affected area to allow access to and the continued use and enjoyment of the affected Lots by the persons entitled to such use and enjoyment. All such construction, repair, maintenance and replacement shall be undertaken and completed in accordance with applicable governmental regulations and permits therefor.

9.9. There shall exist for the benefit of each adjoining owner of the Lots an exclusive and perpetual easement on and across such portions of the party wall structure reasonably necessary or desirable, to perform any maintenance, repair, reconstruction or replacement of the party wall structure. There shall also exist for the benefit of each adjoining Lot an encroachment easement to physically attach to the party wall structure any portion of its improvements attached in the original construction or required for support. Such encroachment easements shall include the right, but not the obligation, to install, use, replace and maintain utility lines and facilities under and beneath such properties, including without limitation, pipes and lines for water, electricity, telephone and cable television, all subject to the reasonable right of the respective adjoining Lot(s) to designate the actual location of any such utility easements encumbering the respective Lot.

9.10. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute may be settled by the Board of the Community Association with the

consent of Lot Owners, otherwise by arbitration as provided by the then existing laws of North Carolina relating to arbitration.

#### **ARTICLE X**

##### **Obligations of Mortgagees**

The following provisions are established for the benefit of the holders of mortgages (the definition of mortgages to include Deeds of Trust or other security instruments) encumbering any Lot located within the Community:

10.1 Developer or Community Association shall be obligated to notify the holder of any first mortgage or deed of trust on a Lot, upon request of such holder, of any default by the Owner and the performance of any of such Owner's obligations described herein, including failure to pay assessments when due, which is not cured within sixty days from the date of such default;

10.2 First mortgagees on a Lot may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements;

10.3 No provision herein shall be construed to give an Owner or any other party priority over any rights of first mortgagees of Lots pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of, any portion of the Common Elements within the Community.

#### **ARTICLE XI**

##### **Bradley Branch Townhome Community Property Owners' Association**

The purpose of the Community Association shall be to provide for the orderly enforcement of these covenants, including, but not limited to, the maintenance, upkeep and repair of the joint rights of way within the Community and any Common Elements or any other matter or area determined by the Community Association to be a part of the Common Elements or other area of common interest.

The Board as established in the Bylaws of the Community Association shall constitute the Executive Board as defined in N.C.G.S. 47F-3-103 and shall be subject to the provisions of such statute except as set forth in this Declaration or the terms of the Bylaws of the Community Association.

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## **ARTICLE XII**

### **General Matters**

12.1 Adjoining Properties and Governmental Actions: All purchasers of Lots do hereby acknowledge that Developer has made no representations as to uses of adjoining properties and such purchasers are been advised to investigate on their own accord any particular uses of adjoining properties and acknowledge that they have assumed such responsibility. By acceptance of a deed conveying title to any Lot within the Community, such Purchasers do hereby understand and agree that Developer is not responsible for any activities or actions conducted on any property adjoining the Community, or in any way relating to or arising out of any use of any property adjoining the Community. The purchaser of any Lot acknowledges that they have investigated on their own accord how such uses may affect the Community and are satisfied that they do not materially or substantially affect the value, use or enjoyment of any Lot

12.2 Enforcement: Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in Article 2 of Chapter 44A of the North Carolina General Statutes, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. Action for enforcement may be brought by the Community Association or any Lot Owner. In addition, the Community Association may impose reasonable fines pursuant to the Act against any Owner for violation of these Restrictions. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other Owners to exercise any or all of the other remedies or those which may be permitted by law or in equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear on or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover a reasonable attorney's fee as a part of such action.

12.3 Amendment and Modification. The Developer does hereby declare the advantages accruing to the Property from these covenants and restrictions hereinabove set forth. All covenants, restrictions and affirmative obligations set forth herein shall run with the Property and shall be binding on all parties and persons claiming under them. Except as otherwise set forth in these Restrictions, during the Control Period, the Developer hereby reserves the absolute right to reasonably modify and/or to amend the Declaration in whole or in part in Developer's sole and absolute discretion as the Developer deems proper and appropriate. After the Control Period, an amendment to the Declaration shall be made and approved in the manner whereby at an annual meeting or specially called meeting of the Members, sixty-seven percent (67%) of the Members

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vote in favor of such amendment and once made, shall become effective when recorded in the Buncombe County, North Carolina, Register's Office. Whenever herein the Developer has reserved a right or the discretion to decide a matter, then the exercise of such right and the decision of such matter shall be in the sole and absolute discretion of the Developer. Nothing herein shall require or shall be construed so as to require the Developer or its related persons or entities to subject all or any part other or adjoining property to the Declaration.

12.4 Developer Control. The "Control Period" or "Developer Control Period" shall mean that period of time from the date of the recording of this Declaration through the earlier of (1) December 31, 2022, or (2) that date upon which Developer conveys the last Lot within the Community and conveys the Common Elements to the Community Association.

12.5 Additional Property. Developer may add subsequently acquired contiguous property to the Community which will be developed in a similar manner and will be made subject to these covenants, conditions and restrictions.

IN WITNESS WHEREOF, the Developer has set its hand the day and year first above written.

"Developer"

**Bradley Branch Investments, LLC,  
a North Carolina limited liability company**

By: \_\_\_\_\_

Bruce M. Alexander, Member/Manager

**State of North Carolina  
County of Buncombe**

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Bruce M. Alexander, as Member/Manager of M Realty, LLC, a North Carolina limited liability company. Witness my hand and official stamp or seal on this the 12<sup>th</sup> day of December, 2013.

My Commission expires:

May 25<sup>th</sup>, 2015



OLGA NAGY

Typed/Printed name of Notary:

Olga Nagy

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Doc ID: 024939720005

Doc ID: 024939720005 Type: CRF  
Recorded: 10/26/2012 at 02:23:33 PM  
Fee Amt: \$25.00 Page 1 of 5  
Workflow# 0000136818-0001  
Buncombe County, NC  
Drew Reisinger Register of Deeds  
BK 5033 PG 1542-1546

Prepared by: Mallory M. Oldham  
Return to: Bell, Davis & Pitt, P.A.  
PO Box 21029  
Winston-Salem, NC 27120-1029

STATE OF NORTH CAROLINA ) SUPPLEMENT AND SECOND AMENDMENT TO  
COUNTY OF BUNCOMBE ) DECLARATION OF PLANNED COMMUNITY FOR  
THE VILLAGE AT BRADLEY BRANCH TOWNHOMES

THIS SUPPLEMENT AND SECOND AMENDMENT TO DECLARATION OF PLANNED COMMUNITY FOR THE VILLAGE AT BRADLEY BRANCH TOWNHOMES is made on the date hereinafter set forth by ATLAS NC II SPE, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant") and THE VILLAGE OF BRADLEY BRANCH HOMEOWNERS' ASSOCIATION (hereinafter referred to as the "Association").

WITNESETH

WHEREAS, Declarant and other members of the Association are the owners of certain property in Buncombe County, North Carolina which is more particularly described as follows:

"All of those certain tracts or parcels of land shown on the plat entitled "Village of Bradley Branch (Phase 2), Fifth Addition, Building G-J & G-K," which appears of record in the Office of the Register of Deeds of Buncombe County, North Carolina in Plat Book 124, Page 138, reference to which is hereby made for a more particular description"; and

WHEREAS, Bradley Branch Developers, LLC, a North Carolina limited liability company ("Bradley Branch"), caused to be recorded a certain Declaration of Planned Community for the Village at Bradley Branch Townhomes on July 14, 2008 in Book 4588, Page 364, in the Office of the Register of Deeds of Buncombe County, North Carolina and a First Amendment to the Village at Bradley Branch Townhomes Declaration of Planned Community on October 27, 2009 in Book 4734, Page 1709, in the Office of the Register of Deeds of Buncombe County, North Carolina (as amended herein, the "Declaration"), which documents and the contents thereof are hereby incorporated by reference and made a part hereof as though the same were set out in their entirety; and

WHEREAS, the above-described property and the property commonly known as Bradley

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Branch Townhomes and more particularly described in the Declaration are subject to the terms and provisions of the Declaration; and

WHEREAS, Declarant acquired all rights of Bradley Branch under the Declaration pursuant to that Trustee's Deed recorded in Book 4944, Page 001, in the Office of the Register of Deeds of Buncombe County, North Carolina; and

WHEREAS, Declarant and the Association desire to amend certain terms and provisions of the Declaration in accordance with the terms and provisions of Article IX, Section 2 of said Declaration.

NOW, THEREFORE, Declarant and the Association hereby declare that all of the property described above shall be held, sold, and conveyed subject to the easements, covenants, conditions and restrictions set out in the Declaration of Planned Community for the Village of Bradley Branch Townhomes recorded in Book 4588, Page 364, in the Office of the Register of Deeds of Buncombe County, North Carolina, as the same has been amended, is amended herein and may be amended from time to time.

Declarant and the Association hereby amend the Declaration as follows:

1. The definition of "DECLARANT" in Article I of the Declaration is hereby deleted in its entirety and in its place is the following:

**"DECLARANT"** shall mean and refer to Atlas NC II SPE, LLC and its successors and assigns. The rights and obligations of the Declarant as described herein may be conveyed and transferred by Declarant by instrument recorded in the Office of the Register of Deeds of Buncombe County, North Carolina."

2. The definition of "DECLARANT CONTROL PERIOD" in Article I of the Declaration is hereby deleted in its entirety and substituted in its place is the following:

**"DECLARANT CONTROL PERIOD"** shall mean the time period commencing on the date of recordation of this Declaration in the Buncombe County Register of Deeds and terminating on or before December 31, 2022 or three (3) months following the date the Declarant surrenders its authority to appoint directors of the Association by an express amendment to this Declaration executed and recorded by the Declarant in the Office of the Register of Deeds for Buncombe County, North Carolina."

3. Article II, Section 4 is hereby deleted in its entirety and substituted in its place is the following:

**"SECTION 4. DECLARANT'S CONVEYANCE OF TITLE TO COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.** At such times as it deems appropriate but not later than December 31, 2022."

4. Article II, Section 6 is hereby deleted in its entirety and substituted in its place is the following:

**"SECTION 6. MAINTENANCE BY THE ASSOCIATION.** The management,

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maintenance, repair, replacement, reconstruction, alteration and improvement of the Common Elements and Limited Common Elements wherever located, shall be the responsibility of the Association and, subject to Article II, Section 7 below, the cost and expense thereof shall be a part of the Common Expenses. All damages caused to a Dwelling by any work on or to the Common Elements or Limited Common Elements done by or for the Association shall be repaired by the Association and the cost thereof shall be a Common Expense. The Association shall also be responsible for the maintenance of the exterior of each Dwelling, including roofs, gutters, downspouts and exterior finishes of each Dwelling except as provided by Article II, Section 7 below."

5. The first sentence of Article II, Section 7 is hereby deleted and substituted in its place is the following:

"Each Lot Owner shall promptly repair, replace or reconstruct, at his or its own expense: (i) all damage to the Common Elements or any Dwelling intentionally or negligently caused by such Lot Owner or any Occupant of his or its guests, agents, tenants, servants, employees or contractors and (ii) those Limited Common Elements which are attributable solely to his or its Lot."

6. The first sentence of Article IV, Section 3 is hereby deleted and substituted in its place is the following:

"The Assessments levied by the Association shall be used to maintain Common Elements and except as provided by Article II, Section 7, Limited Common Elements, including, but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, procurement and maintenance of insurance related to the Common Elements and except as provided by Article II, Section 7, Limited Common Elements, their facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs that may arise."

7. The second sentence of Article IV, Section 5 is hereby deleted in its entirety.

8. Article IX, Section 3(G) is hereby deleted in its entirety and substituted in its place is the following:

"G. The Special Declarant Rights described herein shall be exercised no later than December 31, 2022."

9. Except as modified herein, all of the terms and provisions of the Declaration are hereby ratified and approved and shall remain in full force and effect together with the modifications set forth herein.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the undersigned by and through their respective duly authorized officers, have executed this instrument as of this the 18<sup>th</sup> day of July, 2012.

DECLARANT:

ATLAS NC II SPE, LLC, a North Carolina limited liability company

By: Joshua Collins  
Name: JOSHUA COLLINS  
Title: VICE PRESIDENT  
Date: 7/18/12

STATE OF NORTH CAROLINA  
COUNTY OF WATAUGA

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated herein and in the capacity indicated thereon: JOSHUA COLLINS

Date: July 18, 2011



Patricia Vines  
Official Signature of Notary

Patricia Vines  
Notary's printed or typed name

My Commission Expires: 3/10/16

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ASSOCIATION:

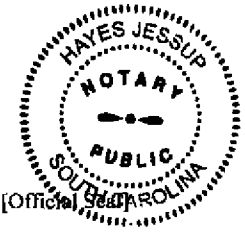
THE VILLAGE OF BRADLEY BRANCH  
HOMEOWNERS' ASSOCIATION

By: [Signature]  
Name: Chris McGuffin  
Title: President  
Date: 7/2/2012

STATE OF South Carolina  
COUNTY OF Charleston §  
§

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated herein and in the capacity indicated thereon: Chris McGuffin, President

Date: July 2, 2012



[Signature]  
Official Signature of Notary  
Hayes Jessup  
Notary's printed or typed name  
My Commission Expires: 11/1/2020

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**EXHIBIT "C"**

**BYLAWS OF  
THE VILLAGE AT BRADLEY BRANCH TOWNHOMES HOMEOWNER'S  
ASSOCIATION, INC.  
A NORTH CAROLINA NON-PROFIT CORPORATION**

**ARTICLE I**

**Identity**

These are the Bylaws of THE VILLAGE AT BRADLEY BRANCH TOWNHOMES HOMEOWNER'S ASSOCIATION, INC., a North Carolina nonprofit corporation (the "Association").

For purposes of these Bylaws, terms specifically defined either in the Declaration of Covenants, Restrictions, et al. (the "Declaration") for the residential Planned Community to be known as "The Village at Bradley Branch Townhomes" and located in Buncombe County, North Carolina (herein "Community"), or the North Carolina Nonprofit Corporation Act, Chapter 55A, North Carolina General Statutes (herein "the Corporation Act"), or the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes (herein "the Act") shall have the same meaning herein. In case of a conflict with defined terms, the Declaration shall control to the extent allowed by law. Unless the Declaration or Bylaws expressly provide otherwise, the procedures and substantive matters governing the Association can be determined by reference to the Corporation Act or the Planned Community Act. In the event of any conflict between the Corporation Act and the Condominium Act, the Condominium Act shall control.

**ARTICLE II**

**Qualifications and Responsibilities  
of Members**

2.1. Membership; Voting Member. Every Owner of a Lot in the Community shall be a member of the Association, and shall remain a member until he ceases to be an Owner of a Lot. When there is more than one Owner of a Lot, all such persons shall be members of the Association; provided, however, that in such a case, said Owners shall designate in writing with the Secretary of the Association a Voting Member for purposes of casting the one (1) vote per Lot on matters requiring a vote of the Association, including, but not limited to, any amendments to the Declaration or election of persons for the Association Board of Directors ("Board"). For the purpose of sufficient receipt of notice of violations or for any other notices required by the Declaration or these Bylaws, notice to the Voting Member shall be binding on all other Owners of the Lot.

2.2. Registration. It shall be the duty of each Owner of a Lot to register his/her name and his/her mailing address with the Secretary of the Association. If an Owner of a Lot does not so register, the Association shall be under no obligation to recognize his privileges of being a member. In no event shall an Owner of a Lot avoid personal responsibility for the obligations of being a member, including the payment of assessments, from his or her failure to register.

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2.3. Prohibition of Assignment. The interest of a member in the Association assets or obligations cannot be transferred or encumbered except as an appurtenance to his Lot.

### ARTICLE III

#### Members' Meetings and Voting

3.1. Place. Meetings of the members shall be held at such place within the Community or within Buncombe County, North Carolina, as may be designated from time to time by the Executive Board of the Association (the "Board").

3.2. Annual Meeting. The members shall meet at least once each year in November the day being specified in the notice of such meeting given pursuant to Section 3.4 below. At each annual meeting the members may transact any business properly coming before them.

3.3. Special Meetings. Special meetings of the members may be called at any time by the President or by a majority of the Board, and shall be called and held within sixty (60) days after written request thereof signed by Qualified Voting Members of the Association as defined below entitled to cast at least fifty-one percent (51%) of the total votes in the Association is delivered to any officer or Director of the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

3.4. Notices. Notice of all meetings of the members, stating the time and place, and accompanied by a complete agenda thereof, shall be given by the President or Secretary to each member. Such notice shall be in writing, and shall be hand delivered or sent prepaid by United States mail to the members at the addresses of their respective Units and to other addresses as any member may have designated to the President or Secretary as it appears on the records of the Association, at least thirty (30) days in advance of any annual or special meeting. Notice shall be deemed delivered when deposited in the United States mail addressed to the member at his address for the respective Lot and/or as it appears on the records of the Association. The Association may vote or transact business on any matter at an annual meeting whether or not specific notice of said item had been given in the notice of the annual meeting. However, for special meetings, only items which were included in the meeting's notice to members can be voted on. Notwithstanding the above, notice to the Qualified Voting Member shall be sufficient notice for any Lot under the Declaration or the Bylaws and such notice shall be imputed to any remaining owners of the applicable Lot.

3.5. Quorum; Adjournment if no Quorum. A quorum shall consist of Qualified Voting Members present, in person or by proxy, entitled to cast at least sixty-seven percent (67%) of the total votes in the Association. If a quorum is not present, the meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement for the next meeting called due to the lack of a quorum shall be fifty (50%) percent of the total votes in the Association.

3.6. Vote. Except for Units owned by the Declarant, each Unit is entitled to one (1) vote. Prior to the expiration of the Declarant Control Period, Declarant is entitled to cast two (2) votes for every Lot that Declarant owns. The reference in the Bylaws and the Planned Community Act to the number of votes allocated in the Association shall include the votes the Declarant is entitled to vote as provided above.

3.7. Manner of Casting Votes. Votes may be cast in person, by proxy or by ballot. A proxy must be in writing, be signed by all owners of the Lot, the votes of which are subject to the proxy, be given only to another member, and be filed with the Secretary on or before the meeting. A proxy shall be valid until revoked in writing by all Owners of such Lot or by the attendance and announcement to the person presiding over the Association meeting of all Owners of such Lot. A proxy should denote the vote desired on a specific issue and/or general authorization to the proxy holder to vote according to his discretion. A proxy is void if not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term. A ballot, if application, shall be on a form proscribed by the Board.

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3.8. Required Votes. All questions shall be decided by a majority of the votes cast by Qualified Voting Members on the question, unless the provisions of applicable law, the Declaration or these Bylaws require a greater vote.

3.9. Action by Members Without Meeting. Any action that may be taken at a meeting of the members, may be taken without a meeting if such action is authorized in writing setting forth the action taken and is signed by all members, or if such action is taken in any other manner permitted by law.

3.10. Prohibition of Cumulative Voting. There shall be no cumulative voting.

3.11. Declarant Control Period. "Declarant Control Period" shall mean the time specified in the Declaration related to Declarant Control and ability to exercise special rights.

3.12. Qualified Voting Member. For purposes of these Bylaws, "Qualified Voting Member" shall mean a member who is authorized to vote for a Lot or is otherwise designated as the Voting Member for a Lot as set forth in 2.1 above and whose Lot is not disqualified from voting as provided in Article III, Section 1(e) of the Declaration for delinquent assessments or other violations of the Declaration.

3.13. Majority Defined. For purposes of these Bylaws, the term "majority" shall mean those votes totaling more than fifty percent (50%) of the votes cast by Qualified Voting Members or of the Directors.

3.14. Pre-condition to Suits Against Declarant. The affirmative vote of no less than two-thirds (2/3) of all votes by Qualified Voting Members entitled to be cast by the Association shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Planned Community development or any part thereof; or (2) assert a claim against or sue Declarant.

## ARTICLE IV

### Directors

4.1. First Board. The first Board shall consist of three (3) persons, whose names are set forth as follows:

4.2. Number and Qualifications of Directors. The Board shall consist of a minimum of three (3) natural persons, as determined by Declarant during the Declarant Control Period (subject to Section 4.3 below), and thereafter at any annual meeting by the Members. Each Director shall be a Lot Owner or the individual nominee of a Lot Owner which is other than an individual.

4.3. Transition of Declarant Control. Pursuant to Section 47F-3-104 of the Act, not later than 60 days after conveyance of twenty-five percent (25%) of the Lots (including Units which may be created pursuant to Special Declarant Rights) to Lot Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be elected by Lot Owners other than the Declarant. Not later than 60 days after conveyance of fifty percent (50%) of the Lots (including Lots which may be created pursuant to Special Declarant Rights) to Lot Owners other than a Declarant, not less than thirty-three percent (33%) of the members of the Board shall be elected by Lot Owners other than Declarant. After the expiration of the Declarant Control Period, the Lot Owners shall elect all the members of the Board.

4.4. Election of Directors. For each Board member to be elected by the Members as provided in Section 4.3 above, such election shall take place at the annual meeting of the Association. The Members shall elect the Directors by a majority of the votes cast in the election.

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4.5. Term. After the expiration of the Declarant Control Period, the terms of the Directors shall be staggered so that at least one (1) but not more than three (3) Directors are elected at any one meeting and so that no Director's term is less than neither one (1) year nor more than three (3) years. The Directors shall establish rules to implement the provisions of this section. Once elected, a Director shall hold office until his successor has been duly elected and has qualified.

4.6. Removal. Any Director may be removed, with or without cause, by a vote of the members entitled to cast at least fifty-one percent (51%) of the total votes in the Association, at a special meeting called for such purpose, and a successor may then be elected by the members to serve for the balance of the removed Director's term. Any Director may be removed, with or without cause, by the Declarant during the Declarant Control Period.

4.7. Vacancies. Any vacancy in the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.

4.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, email, facsimile, or telegraph, at least seventy-two (72) hours prior to the meeting.

4.9. Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request therefore signed by two (2) Directors is delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours' notice of such special meeting shall be given personally or by mail, telephone, email, facsimile, or telegraph to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

4.10. Quorum; Adjournment if No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

4.11. Manner of Acting. Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration or these Bylaws.

4.12. Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by all Directors.

4.13. Compensation of Directors Restricted. Directors shall receive no compensation for their services but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

4.14. Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law, applicable statutes, the Act, the Declaration, the Articles, and these Bylaws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, the Articles, and these Bylaws, and shall include, but not be limited to, the following:

following:

- (a) To prepare and provide to members annually, a report containing at least the
  - (i) A statement of any capital expenditures in excess of two percent (2%) of the current budget or Five Thousand Dollars (\$5,000.00), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.
  - (ii) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.
  - (iii) A statement of the financial condition of the Association for the last fiscal year.
  - (iv) A statement of the status of any pending suits or judgments in which the Association is a party.
  - (v) A statement of the insurance coverage provided by the Association.
  - (vi) A statement of any unpaid assessments payable to the Association, identifying the Unit and the amount of the unpaid assessment.
- (b) To adopt and amend budgets and to determine, and collect assessments to pay the Common Expenses.
- (c) To regulate the use of, and to maintain, repair, replace, modify and improve the Common Elements.
- (d) To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof.
- (e) To enforce the provisions of the Declaration, the Articles, these Bylaws, the Act, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.
- (f) To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these Bylaws, or the Act, to be done by the Board or the members. Notwithstanding the foregoing, the Property, including each Unit, shall at all times be managed by a single managing agent. The single managing agent shall not have authority to lease any part of a Lot without the approval of the Lot Owner.
- (g) To hire and terminate agents and independent contractors.
- (h) To defend, intervene in, or settle any litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Lot Owners on matters affecting the Community, the Common Elements, or more than one Lot. Anything regarding the community as a whole must have at least sixty-seven percent (67%) of the total votes in the Association. No lawsuit can be filed against the Developer or Contractor without at least sixty-seven percent (67%) of the total votes in the Association.
- (i) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.



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- (i) To borrow money for the maintenance, repair, replacement, modification or improvement of Common Elements and to pledge and pay assessments, and any and all other revenue and income, for such purpose.
- (k) To buy Lots, in foreclosure of an assessment lien, or at any other time or for any other reason, and to sell, lease, mortgage, and otherwise deal in Lots from time to time owned by the Association.
- (l) To impose and receive payments, fees and charges for the use, rental or operation of the Common Elements other than the Limited Common Elements, except for elevators, stairways, hallways and other portions of the Common Elements which provide access to the Lots.
- (m) To grant leases, licenses, concessions and easements through and over the Common Elements.
- (n) To impose and collect reasonable charges, including reasonable costs and attorneys' fees, for the evaluation, preparation and recordation of amendments to the Declaration, resale certificates required by Section 47F-3-115 of the Act, or certificates of unpaid assessments.
- (o) To provide for indemnification of the Association's officers and Directors and maintain officers' and Directors liability insurance.
- (p) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, these Bylaws, or the rules and regulations.

## ARTICLE V

### Officers

5.1. Designation of Officers. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer. During the Declarant Control Period, officers do not have to be members or residents of North Carolina. Officers may include the Declarant or a representative of Declarant. After the Declarant Control Period, each officer shall be an Owner of a Lot or the individual nominee of an Owner of a Lot which is other than an individual. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association. The Board may elect an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

5.2. Election of Officers. Officers of the Association shall be elected by the Board. Elections shall be held every two (2) years at the first meeting of the Board held after the annual meeting of the members. The first Board shall elect officers as soon as practicable after filing of the Declaration.

5.3. Term. Each officer shall serve until his successor has been duly elected and has qualified.

5.4. Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

5.5. Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

5.6. Powers and Duties of Officers.

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- (a) President. The President shall be the chief Executive officer of the Association and shall see that all actions and resolutions of the Board are carried into effect.
- (b) Vice President. The Vice-President shall perform such duties of the President as shall be assigned to him by the President, and in the absence of the President shall perform the duties and functions of the President.
- (c) Secretary. The Secretary shall keep the minutes of all meetings and actions of The Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.
- (d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all monies and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

5.7. Execution of Agreements, Etc. All agreements, deeds, mortgages, or other instruments shall be executed by the President or Vice President with an attest by the Secretary (or Assistant Secretary if appointed), or by such other person or persons as may be designated by the Board.

5.8. Compensation of Officers Restricted. No officer shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

## ARTICLE VI

### Indemnification of Directors and Officers

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the North Carolina General Statutes, as now enacted or hereafter amended. In addition, the Association is authorized to maintain Officers and Directors Liability Insurance.

## ARTICLE VII

### Fiscal Management

7.1. Depository. The Board shall designate a depository for the funds of the Association, and may change such depository at any time. Withdrawal of funds from such depository shall be only by checks signed by any two (2) officers of the Association, or as authorized by the Board.

7.2. Fiscal Year. The Fiscal Year of the Association shall run from \_\_\_\_\_ until \_\_\_\_\_ of any given calendar year, provided that the Board, from time to time, by resolution, may change the Fiscal Year to some other designated period.

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## ARTICLE VIII

### Assessments

8.1. Obligation of Members to Pay Assessments; Amount of Levy. Each Owner of a Lot as defined in the Declaration shall be personally and severally liable for an assessment as provided in Article V of the Declaration.

8.2. Allocation of Common Surplus. Any common surplus, including funds in reserve accounts, may be allocated to each Unit in accordance with its percentage of the share of assessments, and, if allocated, may be paid to the Owner of a Unit or credited against that Unit's share of Common Expenses subsequently assessed. Notwithstanding the above, the Board shall retain the authority to apply said surpluses to any current Fiscal Year expenditures in order to satisfy the exempt function income qualification for nonprofit corporations under Section 528 of the Internal Revenue Code.

8.3. Preparation of Budget and Levying of Assessment. For each Fiscal Year, beginning with the Fiscal Year commencing \_\_\_\_\_, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. Within 30 days after adoption of any proposed budget, the Board shall provide the members of the Association with a summary of the budget and a notice of the meeting to consider ratification by the membership of the budget, including a statement that the budget may be ratified without a quorum. There shall be no requirement that a quorum be present at the meeting, annual or special, when the budget is considered for ratification. The budget shall be ratified unless at that meeting a majority of all the members of the Association entitled to vote rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the members shall be continued until such time as the members ratify a subsequent budget proposed by the Board. After the ratification of the budget by the membership as provided above, the Board shall give each member notice of the assessment made against that member's Unit based upon such budget and may also state the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notice. Provided, however, that the first budget after filing of the Declaration and the conveyance of the first Lot within Community shall be prepared and adopted by the Board only for the balance of the then Fiscal Year of the Association.

8.4. Assessment A Lien. Every assessment shall constitute a lien upon each Lot assessed from the date the assessment is levied, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against that Unit and (ii) liens and encumbrances recorded before the recordation of the Declaration.

8.5. Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Payments shall be made to the Association, or as the Board may from time to time otherwise direct. Unless the notice states contrary, annual Assessments are typically due and payable within thirty (30) days of the date of the Assessment.

8.6. Special Assessments. In addition to the assessments levied pursuant to Section 8.3., the Board may levy special assessments at such other and additional times as in its judgment are required for:

- (a) Alterations, restoration and reconstruction of Common Elements and its facilities.
- (b) Improvements, acquisitions and additions to the Common Elements.
- (c) Payment of costs and expenses incurred in curing defaults pursuant to Sections 9.1. and 9.3. hereof.

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The Board shall provide to its members a summary of the proposed special assessment and notice of a meeting to ratify the special assessment at least 30 days after mailing of the summary and notice. A quorum must be present at a meeting where the special assessment is to be considered by the members. The special assessment shall be deemed ratified unless at the meeting a majority of all the members entitled to vote rejects the special assessment. Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

8.7. Failure to Prepare Budget and Levy Annual Assessment; Deficiencies in Procedure. The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.3, each member shall continue to pay the assessment then previously levied pursuant to Section 8.3 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

8.8. Assessment Roll; Certificate. All assessments shall be set forth upon a roll of the Lots which shall be available in the office of the Association for inspection at all reasonable times by members and Security Holders, and their duly authorized representatives. Such roll shall include, for each Lot, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Lot Owner, or an authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against the Lot. The certificate shall be furnished within fourteen (14) business days after receipt of the request and shall be binding upon the Association and all Lot Owners. For such certificate a reasonable fee may be charged by the Board. All Owners of Lots acknowledge that such notice provided in an assessment roll or certificate shall not constitute a violation of any state or federal unfair debt collection laws.

8.9. Default and Enforcement. If any assessment, or installment thereof, remains delinquent for thirty (30) days, then that assessment, and all other assessments then a lien against that Lot, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided in the Planned Community Act. The Board shall have the authority, in cases of delinquency, to accelerate assessments through the end of the applicable fiscal year. All fees, late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

In addition to the foregoing, and without waiving its lien, the Association may sue to obtain a money judgment for the amount of any delinquent assessment, or installment thereof, together with interest, and the members so sued and liable for such assessment shall pay all costs of collection, including reasonable attorneys' fees.

The Association also shall be entitled to suspend the right of a defaulting Lot Owner to use the Common Elements (except access to the Lot) and its facilities until the delinquency is cured.

The remedies noted herein for default on assessments shall include, without limitation, any and all remedies set forth in the Declaration or in the Planned Community Act. The failure of the Association to enforce any assessment delinquency shall not constitute a waiver or abrogation of the right of the Association or its agents to enforce such delinquency in the future, irrespective of the number of breaches thereof that may have occurred by the member regarding assessments.

8.10. Interest on Delinquent Assessments. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but all sums delinquent more than thirty (30) days shall bear interest at the rate of eighteen percent (18%) per annum or as set forth in the notice levying the assessment (but not exceeding the rate of interest allowed by law) from the date of the delinquency until paid. All payments upon account shall be applied first to interest and then to the assessment, or installment

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thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

8.11. Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by any specific provision of these Bylaws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the Common Elements; costs associated with the maintenance, repair and improvement of the Common Elements; premiums for any and all insurance maintained by the Association, including any deductible or coinsurance amount not covered by insurance; utility charges not charged directly to Lot Owners; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 4.13(g) hereof; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements by, or incurred by the Association as a result of the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Elements, or any part of either thereof, is or may be subject including, but not limited to amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VI hereof.

## ARTICLE IX

### Compliance, Enforcement, Fines and Penalties, Other Than Assessment Liens

9.1. Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration, these Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any Lot Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Lot Owner, or by any person or class of persons adversely affected. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs with a maximum cumulative fine of five hundred dollars (\$500.00). Also, if any member fails to perform any obligation under the Act, the Declaration, these Bylaws, the Articles or such rules and regulations as hereinafter promulgated, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his Lot, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Lot owned by such defaulting member. The Association also shall be entitled to suspend the right of a defaulting Lot Owner to use the Common Elements and its facilities until the default is cured.

9.2. Notice of Default and Failure to Cure. In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, a written notice specifying the nature of the default or failure, the cure thereof, and the time within which the cure shall be affected. Within the time limit specified in the notice, the defaulting member may cure the default or failures specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and Board has made its determination and served upon or mailed the same to the defaulting member. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the

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defaulting member a copy of its determination. A violating party shall have thirty (30) days to appeal a decision of the Board to a court of law and failure to file said appeal within thirty (30) days after receipt of the determination shall bar any challenges or any causes of action brought afterwards by said party. The Board's finding of default shall be conclusive in a case of a party's failure to appeal within the above prescribed time. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall serve upon or mail to the defaulting member a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief. The Board may appoint an adjudicatory panel to hear and decide the matters referenced to in this subsection and in doing so, the Board may reserve unto itself the role of an appellate body.

9.3. Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in Section 9.2. hereof, where the default is a structure, thing, or condition existing in or on the premises of the member's Lot, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the member's Lot in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefore as provided in Section 9.1. hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

9.4. Injunction. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 9.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

9.5. Recovery of Attorneys' Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court with interest thereon at the highest rate allowed by law at the time the costs are incurred, from the dates such costs are incurred until paid.

9.6. Nonwaiver of Covenants. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these Bylaws, the Articles, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

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## ARTICLE X

### Amendment

During the Declarant Control Period, the power to alter, amend, or repeal the Bylaws or adopt new Bylaws shall be vested in the Board with Declarant approval being necessary for any particular change. After the Declarant Control Period has expired, the amendment of Bylaws or adoption of new Bylaws can only occur at a regular meeting of the members and shall require an affirmative vote of eighty percent (80%) of the Qualified Voting Members present in person or by proxy at said meeting to such changes. Changes to the Bylaws are not required to be recorded in the Buncombe County Registry. A copy of any amendments to the Bylaws shall be kept on file with the Secretary of the Association.

## ARTICLE XI

### General Provisions

#### 11.1. Rules and Regulations.

(a) By the Board: Effective Date. The Board, including the first Board, may promulgate from time to time such Rules and Regulations as it deems reasonable and necessary governing the administration, management, operation and use of the Common Elements so as to promote the common use and enjoyment thereof by Lot Owners and Occupants and for the protection and preservation thereof. In addition, the Board may adopt such Rules and Regulations as it deems reasonable and necessary with respect to Lots to provide for the common good and enjoyment of all Lot Owners and Occupants, including, without limitation, the right to adopt such restrictions with reference to tenants and leases. In the case of a conflict between the Declaration, the Bylaws or the Rules and Regulations, the more restrictive provision controls. Any Rule and Regulation that applies to the use of a Lot shall not become effective until after thirty (30) days has expired from the date of posting of notice of the Rule and Regulation in a conspicuous location at the offices of the Association or the date that notice of such Rule and Regulation has been placed in the mail to all Qualified Voting Members to the addresses on file with the Association as provided in Article II above. This effective date requirement for Lot restrictions shall; not apply to any emergency rule making as determined in the Board's discretion. In case of emergencies or for regulations pertaining to Common Elements, the applicable Rule and Regulation shall apply on the date of adoption.

(b) By the Association. After the Declarant Control Period has expired, any such Rule or Regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by a majority of the members represented in person or by proxy at an annual or special meeting of the members. Any such act of the members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

(c) Uniform Application. All rules and regulations shall be equally and uniformly applicable to all Lot Owners and their Occupants, but need not be equally and uniformly applicable if it is determined that such unequal or non-uniform application is in the best interest of the Association or if equal and uniform application is not practicable.

(d) Copies Furnished. Copies of all such rules and regulations and any amendments thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to members at the office of the Association. However, failure to furnish, or post, or make available, such rules or regulations shall not affect in any way their validity or enforceability.

11.2. Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceeding when not in conflict with the Declaration, these Bylaws, the Articles,

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the Corporation Act, the Planned Community Act or any statutes of the State of North Carolina applicable thereto. The President of the Association shall have the authority to appoint a parliamentarian.

11.3. Conflict; Severability. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control unless otherwise stated above. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

11.4. Notices. Whenever in the Declaration, the Act or these Bylaws it shall be required or permitted that notice or demand be given or served on the Association or a Lot Owner or other party entitled to notice, such notice or demand shall be given in writing by and mailed, postage prepaid, to the addresses on file with the Association. Unless otherwise provided above, all notices or demands provided under the terms of the Declaration, the Corporation Act, the Planned Community Act or these Bylaws shall be effective the earlier of: i) three (3) days after mailing as provided above; ii) when actually received by a party entitled to notice.

**THESE BYLAWS** adopted and approved at a duly called meeting of the Board of Directors, this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.