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*STATE OF NORTH CAROLINA*

*COUNTY OF HENDERSON*

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF HIGHLAND LAKE  
A PLANNED COMMUNITY  
FLAT ROCK, NORTH CAROLINA  
(Dated: as of July 9, 2010)**

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EXHIBIT A    Legal Description

**KNOW ALL MEN BY THESE PRESENTS** that KERRY P. LINDSEY (hereinafter referred to as "Declarant"), the HIGHLAND LAKE MASTER ASSOCIATION, INC., (hereinafter referred to as the "Master Association") and each of the Existing Sub-Associations (hereinafter defined) do hereby covenant and agree to and with all other persons firms or corporations heretofore and hereafter acquiring any property which is shown on recorded Plats of HIGHLAND LAKE and which specify on the plat(s) deed(s) and/or other recorded document(s) that the subject lots or parcels are subject to this Amended And Restated Declaration or the Original Declaration (hereinafter defined), for full value received, and in consideration of the obligations of the Declarant, the Master Association and each of the Sub-Associations to the Owners, acceptance of deeds of the numbered lots and parcels shown on said plats of the development property entitled HIGHLAND LAKE specifically are made subject to the Original Declaration as amended and restated by this Declaration upon the terms and conditions hereinafter set forth. This Declaration shall run with said properties by whomsoever owned. The lots and parcels which are subject to this Declaration are portions of those tracts recorded in Deed Book 664 at Page 455 and Deed Book 685 at Page 395, Henderson County Registry, including, without limitation, the Property described in Deed Book 991, Page 390, Henderson County Registry, and lots and parcels which are portions of other tracts that may be made subject to this Declaration at a later time. It is specifically noted that not all of that tract described in Deed Book 664 at Page 455, and not all of that tract described in Deed Book 685 at Page 395, Henderson County Registry, will necessarily be made subject to this Declaration. It is the intent of the Declarant not to subject all of the property included in that tract described in Deed Book 664 at Page 455 and described in Deed Book 685 at Page 395, Henderson County Registry, to this Declaration. As of the date of this Declaration, the property which is part of Highland Lake and subject to this Declaration is legally described on Exhibit A attached to and made a part of this Declaration, but Declarant may add other property to Highland Lake and subject such other property to all of the covenants, conditions, restrictions and other terms and provisions of this Declaration in accordance with the terms and provisions of this Declaration, including, but not limited to Article IV.

#### **RECITALS:**

Whereas, Declarant has heretofore executed that certain Declaration of Covenants, Conditions and Restrictions of Highland Lake, recorded June 18, 1999 in Deed Book 991 at Page 390, Henderson County Registry as amended by an Amendment thereto, recorded October 22, 2009 in Deed Book 1411 at Page 096, Henderson County Registry (hereinafter collectively referred to as the "Original Declaration") and desires by the execution of this Declaration to amend the Original Declaration and in so doing to restate the same in its entirety;

Whereas, Declarant has established Highland Lake as a mixed-use community with a general scheme of development that Declarant, the Master Association and each of the Existing Sub-Associations agree has proven to be beneficial to Highland Lake and its Owners, to the Village of Flat Rock and Henderson County, and to Declarant and all of Declarant's successors in interest in ownership of all or any part of Highland Lake;

Whereas, Declarant, the Master Association and each of the Existing Sub-Associations wish Highland Lake to continue to be constructed and operated in a first class manner, with

different but compatible uses of the property therein, including among such uses (but not limited to) single-family and multi-family residences, retail shopping, offices, libraries, banks, medical facilities, extended care facilities, recreational facilities, as well as such other compatible uses which the Declarant, Master Association or the applicable Sub-Association determines to be permitted in Highland Lake;

Whereas, Declarant has heretofore established the Master Association to administer the terms of the Original Declaration and govern Highland Lake and the Existing Sub-Associations to govern their respective Sub-Areas (hereinafter defined);

Whereas, Declarant, the Master Association and each of the Existing Sub-Associations are now executing this Declaration to amend and restate the Original Declaration in its entirety to be effective on and after the Effective Date of this Declaration; and

Whereas, this Declaration so amending and restating the Original Declaration has been approved by an affirmative vote of sixty-seven percent (67%) or more of the Residential Lot and Mixed-Use Parcel Owners as required in Article XIII of the Original Declaration.

Now, therefore, in consideration of the foregoing, on and after the Effective Date of this Declaration, all of the covenants, conditions, restrictions and other terms and provisions of the Original Declaration are struck and replaced by all of the covenants, conditions, restrictions and other terms and provisions of this Declaration as follows:

## I. DEFINITIONS

The terms set forth below, as used in the Declaration, are defined as follows:

- 1.1 **Act.** The North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes and any amendments thereto. Highland Lake and each of its Sub-Areas are subject to the Act.
- 1.2 **Amended And Restated Declaration.** This Declaration.
- 1.3 **Assessments.** The amounts assessed against the Lots and Owners, from time to time, by the Master Association or the applicable Sub-Association for Common Expenses and other charges to include, but not limited to, special assessments, fines, late charges and attorneys' fees to enable it to govern and operate Highland Lake or the Sub-Area of Highland Lake governed by such Sub-Association in accordance with the terms and provisions of this Declaration.
- 1.4 **Bylaws.** The Bylaws of the Master Association and the Bylaws of each of the Sub-Associations as the same may be amended from time to time. The Bylaws may be amended, from time to time, as therein provided, subject to the provisions of Chapter 55A of the General Statutes and the North Carolina Non Profit Corporation Act, as amended from time to time.

- 1.4.1 Cluster Homes.** The duplex units located in the Traditional Neighborhood.
- 1.5 Common Areas.** All of Highland Lake, except the Lots. Common Areas shall include Master Common Areas, Open Space, roads and elements located in Common Areas. No Common Areas are dedicated until so shown on a recorded Plat or otherwise so designated on a conveyance thereof to the Master Association or a Sub-Association.
- 1.6 Common Expenses.** All sums which may be lawfully assessed against the Owners by the Master Association or the applicable Sub-Association, as the case may be, pursuant to and subject to the terms and provisions of this Declaration, including, but not limited to, ad valorem taxes, public assessments or governmental liens, if any, levied on the Common Areas; expenses of administration, management fees, road impact fees, maintenance, repair or replacement of the Common Areas, including reserves established therefor; expenses agreed upon as Common Expenses by the Master Association or the applicable Sub-Association, as the case may be; expenses declared Common Expenses by, this Declaration or the Bylaws, together with any such expenditures permitted or required by the Act; and, insurance premiums with respect to the Common Areas, including comprehensive general liability insurance insuring the Master Association, the applicable Sub-Association, and the Owners against liability arising out of bodily injury, death and property damage.
- 1.7 Construction.** The physical disturbance of any Lot, including grading, excavation or other site preparation thereof, and the location, placement, erection, construction or replacement of any structure, building, house, sign, fence, parking area, driveway, sports equipment, landscaping, pools, gazebos or trellis thereon and any additions or changes thereto.
- 1.7.1 Consumer Price Index.** The Consumer Price Index (All Urban Consumers) published by the United State Government (or a comparable substitute index if such index is ever discontinued).
- 1.8 Declarant.** Kerry P. Lindsey, his heirs, executors, administrators and assigns.
- 1.9 DRC.** The Highland Lake Design Review Committee, which shall govern all Construction within Highland Lake, pursuant to the Guidelines or the applicable Sub-DRC which shall govern all Construction within its Sub-Area. The DRC's and Sub-DRC's general purpose is to keep Highland Lake attractive for the enjoyment of the Owners. Each Sub-Association may appoint its own DRC ("Sub-DRC") to govern Construction in the Sub-Area governed by such Sub-Association. In the event of any conflict between the Guidelines promulgated by the DRC and those promulgated by a Sub-DRC, then the Guidelines promulgated by the Sub-DRC shall control, but only with respect to the Sub-Area governed by the Sub-Association which appointed such Sub-DRC. References in this Declaration to the applicable Sub-DRC shall mean the Sub-DRC responsible for governing Construction in the Sub-Area governed by the Sub-Association which appointed such Sub-DRC.



- 1.10 Effective Date.** The Effective Date of this Declaration shall be the date of the recording of this Declaration with the Henderson County Registry. The Original Declaration shall remain in full force and effect until the Effective Date of this Declaration.
- 1.10.1 Farm Parcel.** The area described in Article XX of this Declaration.
- 1.11 Garden Hamlet.** The Sub-Area described in Article XVI of this Declaration.
- 1.12 Guidelines.** The DRC Design Guidelines and Procedures as set forth in the Highland Lake Design Guidelines and Procedures Manual, as the same may be enacted and amended by the Master Association, from time to time. Additionally, Guidelines may be promulgated and amended by a Sub-Association, from time to time, with respect to Construction in its Sub-Area as contemplated by 1.9 hereof.
- 1.13 Highland Lake.** The mixed-use community to be developed by Declarant using such name, pursuant to this Declaration, and which shall occupy a portion of the property recorded in Deed Book 664 at Page 445 and Deed Book 685 at Page 395, Henderson County Registry, and may occupy other property as well, as added by Declarant pursuant to the terms and provisions of Article IV. hereof. As of the date of this Declaration, the property which is subject to this Declaration and part of Highland Lake is legally described on Exhibit A attached hereto and made a part hereof. The property now zoned and which, at Declarant's election, may become part of Highland Lake consists of approximately 106.3 acres of land located in the Village of Flat Rock, North Carolina and zoned by the Village as a Planned Mixed Use Development, but nothing contained herein is intended to limit Declarant's right to add other property to Highland Lake pursuant to the terms and provisions of Article IV hereof.
- 1.14 Holder (or Holders).** The holder of a note secured by a duly recorded deed of trust (mortgage) on a Lot, so long as such holder is a commercial lender, such as a bank, mortgage company, savings bank, credit union or insurance company; provided, however that prior to the applicable Release date for a Sub-Area Declarant may be such a Holder of a note so secured by a deed of trust (mortgage) on a Lot in such Sub-Area.
- 1.15 Landscaping.** The general care and treatment of natural and green areas, including seeding, reseeding, planting, replanting, trimming, pruning, mowing, edging, watering, fertilizing, thatching and other care, removal, maintenance and replacement of green areas, lawns, trees, shrubs, flowers and other vegetation.
- 1.16 Lot.** Each Residential Lot or Mixed-Use Parcel in Highland Lake improved with a single family residence or mixed-use structure thereon shall be deemed one (1) Lot even if it consists of several subdivided lots.
- 1.17 Market Center.** The Sub-Area of Highland Lake described in Article XV of this Declaration.

- 1.18 Market Center Residences.** The Sub-Area of Highland Lake described in Article XIX of this Declaration.
- 1.19 Master Association.** The non-profit North Carolina corporation formed by the Declarant as the Highland Lake Master Association Inc., its successors and assigns formed to exercise the powers of the Master Association pursuant to Original Declaration and this Declaration.
- 1.20 Master Common Areas.** Those Common Areas which are for the exclusive benefit of two or more Sub-Areas. As of the date hereof, the only existing Master Common Area is the gabion water detention facility which benefits the Traditional Neighborhood and the Farm Parcel. Other Master Common Areas may be added to Highland Lake, subject to obtaining the prior written approval of the Master Association and the Sub-Associations benefited by the same..
- 1.20.1 Master Site Plan.** The Highland Lake Planned mixed Use Development Master Site Plan as submitted on May 13, 1999 to the Village as updated and amended, subject to Village approval.
- 1.21 Mini-Farm/Agricultural Property.** Land designated as Mini-farm/Agricultural that may be owned by the Declarant, the Master Association, or other entity or entities, and which may incorporate Open Space within its boundaries. Such land shall be used for purposes permitted by the Village of Flat Rock Zoning Ordinance, including agricultural uses.
- 1.22 Mixed-Use Parcel.** A parcel within the Market Center or Town Center classification, which may include any commercial, institutional, residential, or live/work parcel within either classification.
- 1.23 Mixed-Use Parcel Easements.** The non-exclusive, perpetual right of each Owner in the Town Center or Market Center classification to use the Mixed-Use Parcel Elements within each classification for the reasonably intended purpose thereof, subject to all rules governing the use thereof adopted by the Master Association or the applicable Sub-Association, from time to time.
- 1.24 Mixed-Use Parcel Elements.** Certain Common Areas within the Town Center and Market Center, including, but not limited to, parking areas, private roadways, alleys, driveways, sidewalks, greenways, boardwalks, trails and the landscaping within each Mixed-Use Parcel and so designated on recorded Plat or Plats or in other recorded documents.
- 1.25 Open Space.** Any natural landscaped or agricultural area within Highland Lake that is designated on a recorded Plat to remain permanently open. Except for the Mini-Farm/Agricultural Property, designated Open Space shall be part of the Common Areas. Such Open Space shall be owned, controlled and maintained by the Master Association or the applicable Sub-Association governing the Sub-Area in which such Open Space is

located. No Open Space areas are dedicated until so shown on a recorded Plat or as otherwise so designated by the instrument conveying same to the Master Association or the applicable Sub Association.

- 1.26 **Original Declaration.** The Declaration of Covenants, Conditions and Restrictions of Highland Lake recorded June 18, 1999 in Deed Book 991 at Page 390, Henderson County Registry as amended by an amendment thereto recorded October 22, 2009 in Deed Book 1411 at Page 096, Henderson County Registry.
- 1.27 **Owner (or Owners).** The Owner or Owners of a Lot in Highland Lake. Each Owner shall be a member of the Master Association and the applicable Sub-Association, if any, which governs the Sub-Area in which such Lot is located.
- 1.28 **Plans or Plans and Specifications.** The layout plans, specifications, site plans, external finishes, Landscaping, contractor selection and all other matters required to be provided to the DRC or Sub-DRC by an Owner in accordance with the Guidelines promulgated by the DRC or the applicable Sub-DRC.
- 1.29 **Plat (or Plats).** A Plat or Plats of survey of all or a part of Highland Lake and recorded from time to time in the Henderson County Registry.
- 1.30 **Release Dates.** The Release Date for the Master Association and the Sub-Association for the Traditional Neighborhood occurred on June 18, 2009. With respect to any Sub-Area covered by a Sub-Declaration that specifies a different Release Date, the Release Date for such Sub-Area shall be as specified in such Sub-Declaration, whether such Sub-Declaration designating such Sub-Area is recorded before or after the Release Date referred to above and regardless of whether such Sub-Area includes added land as provided in Section 4.1 hereof. Until the applicable Release Date for a Sub-Area, Declarant reserves all of the Special Declarant Rights to govern such Sub-Area in the same manner that the Master Association or the applicable Sub-Association is authorized to govern such Sub-Area, subject to and in accordance with the terms and provisions of this Declaration.
- 1.31 **Residential Lot (or Residential Lots).** Any subdivided parcel of land designated for residential purposes within Highland Lake that is shown numbered or lettered on a Plat of Highland Lake.
- 1.32 **Residential Type.** The type of neighborhood within the Residential Lot classification such as Estate, Traditional Neighborhood, Courtyard, Garden Hamlet or South Lake, as designated on a recorded Plat.
- 1.33 **Rules and Regulations.** Any measures heretofore or hereafter adopted by the Master Association or the applicable Sub-Association in furtherance of the purposes of the Original Declaration or this Declaration, from time to time.
- 1.33.1 **Single Family.** Any number of individuals living together as a single housekeeping unit.

- 1.33.2 Single Family Dwelling.** A detached dwelling or Cluster Home in the Traditional Neighborhood designed to be occupied by one family.
- 1.34 South Lake.** The Sub-Area of Highland Lake described in Article XVII of this Declaration.
- 1.35 Sub-Area (or Sub-Areas).** Each area of Highland Lake referred to Articles XIV. through XX. hereof, which is or may become a Sub-Area.
- 1.36 Sub-Association (or Sub-Associations).** Any association as may hereafter be established, from time to time, by Declarant or any of his affiliates to govern a Sub-Area in Highland Lake. Declarant has heretofore established as Sub-Associations the Highland Lake Residential Homeowners' Association, Inc. to govern the Traditional Neighborhood, the Garden Hamlet Property Owners Association, Inc. to govern the Garden Hamlet and the South Lake Homeowners Association of Flat Rock, Inc. to govern South Lake (collectively called the "Existing Sub-Associations". References in this Declaration to the "applicable Sub-Association" shall mean the Sub-Association, if any, responsible for governing the Sub-Area of Highland Lake in question.
- 1.37 Sub-Declaration (or Sub-Declarations).** Any of the Sub-Declarations as may be established by Declarant from time to time, including, but not limited to the declarations heretofore established for the Garden Hamlet and South Lake. Each Sub-Declaration shall define that part of Highland Lake covered by such Sub-Declaration and the Sub-Association responsible for governing such area. References in this Declaration to the "applicable Sub-Declaration" shall mean the Sub-Declaration, if any, established by Declarant for the Sub-Area in question.
- 1.38 Traditional Neighborhood.** The Sub-Area of Highland Lake described in Article XIV of this Declaration.
- 1.38.1 Traditional Neighborhood Association.** The non-profit North Carolina corporation formed by the Declarant as the Highland Lake Residential Homeowners' Association, Inc., its successors and assigns, to govern the Traditional Neighborhood pursuant to this Declaration.
- 1.39 Town Center.** The Sub-Area of Highland Lake described in Article XVIII of this Declaration.
- 1.39.1 Village.** The Village of Flat Rock, North Carolina.
- 1.40 Village Green.** That area of 1.4 acres, more or less, at the Highland Lake Drive entrance to the Traditional Neighborhood, and as so designated on a Plat.

## II. GENERAL

- 2.1 Enforcement and Administration.** This Declaration shall be enforced and administered by the Master Association and each of the Sub-Associations, subject to and in accordance with the following:
- 2.1.1 By Sub-Associations.** Notwithstanding anything to the contrary contained in this Declaration, each Sub-Association shall, with respect to the Sub-Area of Highland Lake governed by such Sub-Association, have the first right to enforce the terms and provisions of this Declaration and to perform all acts and exercise all rights, which the Master Association is otherwise authorized to do under the terms of this Declaration, and the Master Association will only do the same as hereinafter provided; provided, however that the Master Association shall enforce the terms and provisions of this Declaration relating to the Master Common Areas and to any Sub-Area which is not governed by a Sub-Association.
- 2.1.2 By Master Association.** The Master Association shall not enforce any of the terms and provisions of this Declaration or perform any acts or exercise any rights under this Declaration (except the terms and provisions of this Declaration relating to the Master Common Areas) without giving the applicable Sub-Association, if any, not less than thirty (30) days prior written notice thereof ("Default Notice") and the failure of such Sub-Association to cure the default specified in such Default Notice within such thirty-day period, except that such notice period may be shortened, as specified in such Default Notice in the event of an emergency threatening personal injury or significant property damage; provided, however, that if such default is of such a nature that it cannot be cured within such thirty-day period or such shortened period, as specified in such Default Notice, then the Master Association shall not act and such Sub-Association shall not be in default so long as such Sub-Association promptly commences to cure such default within such thirty-day period or such shortened period, as specified in such Default Notice and continues to cure such default with all due diligence to completion. If there is no Sub-Association for a Sub-Area, the Master Association shall enforce the terms and provisions of this Declaration with respect to such Sub-Area without giving a Default Notice as provided in this 2.1.2.
- 2.1.3 By Owners.** No Owner shall seek to perform any of the provisions of this Declaration without giving the Master Association and the applicable Sub-Association, if any, not less than thirty (30) days prior written notice thereof ("Default Notice") and the failure of the Master Association or such Sub-Association to cure the default specified in such Default Notice within such thirty-day period; provided, however, that if such default is of such a nature that it cannot be cured within such thirty-day period, then such Owner shall not act and the Master Association or such Sub-Association shall not be in default so long as the Master Association or such Sub-Association promptly commences to cure such default within such thirty-day period and continues to cure such default with all due diligence to completion.

**2.1.4 Enforcement Procedures.** Neither the Master Association or the applicable Sub-Association shall suspend privileges or impose a fine or charge for damages against a Lot Owner unless and until the following procedures have been complied with:

**(a) Demand.** Written demand to cease and desist from an alleged violation shall be served on the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further occurrence of the same violation may result in the imposition of sanctions, if the violation is not continuing. The Board of Directors or its designee of the Master Association or the applicable Sub-Association may demand immediate abatement in such circumstances that, in such Board's sole determination the violation poses a danger to safety of person or property.

**(b) Notice.** Within twelve (12) months of such demand as stated above, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation is subsequently repeated, such Board may impose sanctions by giving the violator written notice. This notice shall state (i) the nature of the alleged violation; (ii) the amount of the fine or other sanctions to be imposed, (iii) that the violator will have the opportunity to be heard by requesting within ten (10) days from the date of such notice, a hearing before such Board to contest such fine or other sanctions; (iv) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (v) that all rights to be heard or to have such fine or other sanctions reconsidered are waived by the violator if a hearing is not requested within ten (10) days of the date of such notice.

**(c) Hearing.** If a hearing is so requested, it shall be held before such Board and the violator will be given a reasonable opportunity to be heard. The Board shall render its final decision regarding the imposition of such fine or other sanctions no later than five (5) days after the hearing and inform the violator of its decision. The Board shall issue a written statement of the results of the hearing.

**2.2 General Matters.** Declarant has and may, from time to time, cause a Plat or Plats to be recorded in the Henderson County Registry. Residential Lots and Mixed-Use Parcels may be improved or unimproved at the time of platting and at the time of sale or lease. Residential Lots and Mixed-Use Parcels may be offered for sale as part of the Highland Lake development.

**2.2.1 Easements.** Each Owner has an easement to use all of the Common Areas in Highland Lake, subject to and in accordance with the terms and provisions of this Declaration and any Sub-Declaration governing the Sub-Area in which such Common Area is located; provided each Sub-Association may promulgate reasonable rules and regulations governing the use of such Common Areas as are located within the Sub-Area governed by such Sub-Association provided that same do not unreasonably deprive or impair the rights provided herein. Any Mixed-Use Parcel sold shall include the Mixed-Use Parcel Easements of that classification.

**2.2.2 Binding Covenants.** The covenants contained in this Declaration shall be applicable to and bind all of Highland Lake, including Residential Lots and Mixed-Use Parcels. No use shall be made of any Residential Lot or Mixed-Use Parcel that is contrary to what is permitted by such covenants. Nothing contained in this Declaration shall prevent Declarant or any of his affiliates from constructing in Highland Lake any structure which is otherwise authorized to be constructed in Highland Lake pursuant to the applicable provisions of the RC Zoning classification of the Village, the PMUD Zoning of the Village of Flat Rock and the Master Plan for Highland Lake as the same may be amended, from time to time.

**2.2.3 Encroachment.** If any portion of an improvement as approved by the DRC for the Master Association or the Sub-DRC for the applicable Sub-Association encroaches on any Common Area, whether now or hereafter, an easement for that encroaching portion therefor is reserved and created hereby.

**2.2.4 Utility Contracts.** Declarant reserves the right to subject, prior to the applicable Release Date, any Sub-Areas to a contract with utility companies for the installation of lines and/or equipment, together with such easements as shall be reasonably necessary for the installation, maintenance and repair thereof. If such installation is for the provision of service to one or more Residential Lots or Mixed Use Parcels, then the cost thereof shall be payable by the applicable Sub-Association in which such Residential Lots or Mixed Use Parcels are located to be equitably allocated amongst the parcels benefited thereby.

### III. COMMON AREAS

#### 3.1 Uses, Ownership and Management.

**3.1.1 Intent.** The Common Areas are intended to serve Highland Lake, its Owners and its residents, and shall include the parking areas, alleys, driveways, sidewalks, boardwalks, trails, park and garden areas, greenways, landscaping, any roadway shown on a Plat as a non-publicly maintained roadway (but providing general access), drainage facilities, utility installations, areas on which signage is erected by the Declarant, Master Association or a Sub-Association and such signage, all lights, light poles, curbs, medians, maintenance areas, landscaping materials installed by Declarant and all recreational and/or meeting facilities established hereafter by the Declarant, Master Association or a Sub-Association for use of Owners.

**3.1.2 Ownership.** It is the intent of the Declarant that Common Areas within each Sub-Area governed by a Sub-Association shall be owned by such Sub-Association and that the Master Common Areas shall be owned by the Master Association. The actual ownership of any Common Areas and Master Common Areas will be designated on Plats, deeds, and/or other documents recorded in the Henderson County Register of Deeds Office executed by Declarant from time to time, whether before or after the applicable Release Date. Declarant shall convey or cause to be conveyed all of the Common Areas (except the Master Common Areas), and/or Mixed-Use Parcel Easements shown on Plats to the applicable Sub-Association, which governs the Sub-Area in which such Common

Areas and/or Mixed-Use Parcel Easements are located and shall convey the Master Common Areas to the Master Association.

**3.1.3 Declarant Rights.** Declarant retains the absolute right to manage, control and otherwise direct the use, maintenance and operation of the Common Areas and Mixed-Use Parcel Elements in each Sub-Area prior to the applicable Release Date for such Sub-Area, regardless of anything to the contrary herein. Prior to the applicable Release Dates, Declarant may utilize certain Common Areas, Master Common Areas and Mixed-Use Parcel Elements for temporary open-air marketplaces or special events that are open to residents and non-residents.

- 3.2 Owners' Common Area Rights.** The Owners shall have the non-exclusive right to the use of all of the Common Areas in Highland Lake in accordance with the provisions hereof and subject at all times to the control thereof by the Master Association or the applicable Sub-Association, if any, and to such Rules and Regulations as are established with respect thereto by the Master Association and such applicable Sub-Association. Except as may be otherwise set forth herein, the Common Areas shall be operated, managed, repaired, maintained and controlled by the Master Association or the applicable Sub-Association. Prior to the applicable Release Date for any Sub-Area, Declarant may dedicate any roadways in such Sub-Area to public use without any other consent thereto. After the applicable Release Date for any Sub-Area, any roadways in such Sub-Area may be dedicated to general public use upon the affirmative vote of the Owners of at least sixty-seven percent (67%) of the Lots in such Sub-Area. The Common Areas shall remain undivided, and no Owner may bring an action for partition with respect thereto.
- 3.3. Village Green.** The Village Green is part of the Common Areas in the Traditional Neighborhood and shall be perpetually kept and maintained by the Traditional Neighborhood Association in a generally undeveloped state, as a "green area", to serve as a park with landscaping, and/or pedestrian walkways, and/or picnic areas, and/or structures appropriate thereto.
- 3.4 Change in Use.** Once a Common Area has been dedicated on a Plat, no change in the use of such Common Area shall be made without the affirmative vote of not less than sixty-seven percent (67%) of the Owners of the Lots in the applicable Sub-Area in which such Common Area or Open Space is located.

#### IV. HIGHLAND LAKE ADDITIONS

- 4.1 Additions.** Subject to the terms and provisions of this Declaration and compliance with all applicable laws and ordinances, Declarant may, at any time, add other property to Highland Lake as separate Sub-Areas by the filing of a Plat thereof and Sub-Declaration setting forth its classification and Sub-Area. After the applicable Release for a Sub-Area, Declarant may not add other property to such Sub-Area without the affirmative vote of not less than sixty-seven percent (67%) of the Owners of the Lots in such Sub-Area; provided, however, that subject to compliance with all applicable laws and ordinances, Declarant may add not more than two (2) Lots to any Sub-Area after the applicable



Release Date if (i) such additional land shall be contiguous to such Sub-Area; (ii) such additional land shall be developed with substantially the same types and styles of houses or other structures as then exist in such Sub-Area; and (iii) the Common Areas in such additional land shall be substantially the same as and integrated with the Common Areas in such Sub-Area.

- 4.2 Extension of Roads and Utilities.** Declarant reserves the right to extend roads and utilities in any Sub-Area, whether before or after the Release Date for such Sub-Area, to serve other property added to Highland Lake in accordance with this Declaration; provided, however, that such extensions shall be made in compliance with the Master Site Plan and all applicable laws and ordinances, and provided, further that prior to the construction of, and as a condition to, any such extensions, Declarant and the Board of Directors for the Sub-Area in which such roads are being extended shall determine the roads for which the Lots in such property being added to Highland Lake are to be assessed as provided in 4.4 hereof.
- 4.3 Road Impact Fees.** If any property is added to Highland Lake and any of the then existing roads in Highland Lake are used by trucks or construction equipment to develop such property, the Master Association or the Sub-Association in which such roads are located may assess such property and the Owner or Owners thereof for road impact fees in such amounts as may be reasonably determined by the Master Association or such Sub-Association; provided, however, that in no event shall such fees exceed more than \$500.00 per Lot, as adjusted, from time to time, based on increases in the Consumer Price Index. Declarant shall use reasonable efforts to prevent the use of such roads by such trucks and construction equipment to the extent reasonably practicable.
- 4.4 Road Assessments.** If any other property is added to Highland Lake and is developed so that it uses any of the roads in any then existing Sub-Area for ingress and egress to and from such new development, then the Sub-Association governing such existing Sub-Area shall assess the Lots in such new development for the costs of maintaining, repairing and resurfacing (including reserves therefor) such roads in the same manner that such Sub-Association assesses the Lots in such existing Sub-Area. The roads for which such new development are to be assessed will be determined as provided in 4.2 hereof.

## V. USES AND LIMITATIONS

- 5.1 Rules and Regulations.** All Owners shall comply with the provisions of this Declaration and the Sub-Declaration, if any, of the applicable Sub-Association, if any, with all laws, governmental ordinances and regulations, and with all Rules and Regulations that may be adopted hereafter, from time to time, by the Master Association and the applicable Sub-Association, provided all such Rules and Regulations shall apply uniformly to all Owners in each Sub-Area, shall be consistent with this Declaration and not in derogation of or intended as an amendment thereof. The Rules and Regulations, once adopted, may be amended at any time or times thereafter by a vote of at least a majority of the Directors of the Master Association or the applicable Sub-Association, if any. Notwithstanding the above, prior to the applicable Release Date for any Sub-Area, no adoption or amendment

of a Rule or Regulation hereof with respect to such Sub-Area shall be effective without Declarant's consent thereto. No Rule or Regulation may deny any Owner an easement for access to such Owners Lot. A Sub-Association may adopt rules and regulations for application to its Sub-Area. Such Rules and Regulations may provide for fines or other penalties for non-compliance with such Rules and Regulations and for non-compliance with any of the terms and provisions of this Declaration and for non-compliance with any of the terms and provisions of the Guidelines. Such fines and penalties may be assessed and collected in the same manner as Assessments.

**5.2 Subdivision.** Except as may be otherwise provided in a conveyance from Declarant, no Lot shall be subdivided by anyone other than Declarant. If due to topography, inadvertent misplacement of improvements or for other good reason an Owner wishes a Lot dividing line to be modified, the consent of the Declarant or the Master Association and the DRC or the applicable Sub-Association and its Sub-DRC is required; also, governmental review may be required.

**5.3 Recombination of Residential Lots.** When an Owner purchases more than one 16 foot lot together as a single home building site within the Traditional Neighborhood, said lots shall be recombined into one permanent Residential Lot in the initial Deed to the property and such recombined Residential Lot cannot be divided in the future except as allowed herein. Said Deed may state that the recombined Residential Lot shall not be subdivided in the future. Declarant may, from time to time, record a Plat by the block or "neighborhood" which designates the recombined Residential Lots.

#### **5.4 Conditions and Restrictions.**

**5.4.1 Hazard or Nuisance.** No part of Highland Lake shall be used in any manner, nor shall any condition be allowed to exist thereon, that would constitute a fire hazard, a nuisance, or that would produce or allow to emanate therefrom noxious odors or fumes, excessive noise or vibrations. No unsanitary condition or anything that is hazardous to health shall be permitted to remain on any Lot or Common Area. All fuel storage tanks and trash receptacles shall be below ground or screened in a manner satisfactory to the DRC or applicable Sub-DRC.

**5.4.2 Maintained Condition.** All Lots and improvements thereon and appurtenances thereto shall be kept in good condition and repair by the Owners thereof. All garages facing a street must have their doors kept in a closed position, except during the time of actual entry and exit. The Master Association or the applicable Sub-Association shall have the right, but not the duty, to enter upon any Lot for the purpose of abating any unclean, unsightly or unkempt condition of buildings or grounds that tend to decrease the beauty of the neighborhood. The cost of such abatement and any damage resulting from such entry shall be at the expense of the Owner or Owners of such Lot and shall not be deemed a trespass.

**5.4.3 Exclusions.** No outside clotheslines or clothes drying shall be permitted within Highland Lake except within private yards enclosed by privacy fences. No boats, trailers,

mobile homes, recreational vehicles, commercial vehicles exceeding a two (2) ton carrying capacity or a length of twenty-five (25) feet, or inoperative vehicles may be placed, stored or kept on any Lot, other than within a closed building (e.g., a garage with the door closed) or at a site approved by the DRC or applicable Sub-DRC. No rebuilding of vehicles or major mechanical repairs thereto shall take place within Highland Lake outside a closed building, and no such work may be done on a commercial basis for which a fee or other remuneration is charged or accepted. No lawn ornamentation of any kind, including but not limited to fencing, statuary, windmills, pink flamingos, etc., may be placed anywhere within Highland Lake, unless approved prior to placement by the DRC or applicable Sub-DRC. No garish, flashing or unsightly signs may be placed anywhere in Highland Lake. All signage is subject to the prior approval of the DRC or applicable Sub-DRC, which shall not be unreasonably withheld or delayed. No outdoor burning or fireworks shall be permitted in Highland Lake.

- 5.5 **Landscaping.** The existing natural vegetation on all Lots in Highland Lake shall be kept in a reasonably natural state, with no live trees on a Lot to be removed, cut or topped, nor existing natural vegetation significantly cut, trimmed or landscaped, except as otherwise permitted by the Master Association or applicable Sub-Association. All Landscaping on Lots shall be kept in a reasonably maintained condition at all times, with lawns being mowed (and trimmed) on a reasonably regular basis, and all dead trees and plants promptly removed by the Owner or Owners of the Lots.
- 5.6 **Utility Lines.** All utility lines installed in Highland Lake shall be underground. Any above-ground utility equipment shall be appropriately screened in the manner approved by the DRC or applicable Sub-DRC.
- 5.7 **Water Courses and Drainage.** No creeks or other water courses within Highland Lake shall be dammed, impounded, dredged or have water taken therefrom without permission from the Master Association and the applicable Sub-Association. All Owners shall provide for adequate drainage from their Lots in a reasonable and careful manner, and all such drainage facilities and equipment shall be kept clear and operating at all times by the Owners of such Lots. No Owner shall unreasonably divert or increase the flow of surface water onto the Lot of another Owner. Notwithstanding the foregoing, Declarant reserves the right, from time to time, to draw reasonable amounts of water from creeks or other water courses for the purpose of irrigating the MiniFarm/Agricultural Property, as needed.
- 5.8 **Plumbing.** All occupied structures on Lots must have plumbing systems that are connected to either a central sewer system operated by a municipal or other governmental system or by Declarant or, subject to obtaining the prior written approval of the Master Association or the applicable Sub-Association, to a septic tank or other approved sewage disposal system constructed, maintained and operated in accordance with the laws of the State of North Carolina.
- 5.9 **Reception Equipment.** Owners may place one satellite mini-dish (not exceeding the size customarily provided from time to time by the company providing satellite service, such

as Direct TV or Dish Network) on a Lot so long as such dish is located so as to be least visible from any street and adjoining areas but still be able to receive adequate signal strength for reception. Any dish installation that will be visible from any street or adjoining area must be approved by the DRC or applicable Sub-DRC; said approval shall not be unreasonably withheld or delayed. No other equipment for the reception, or transmission of television, radio or other airborne waves or signals, whether antenna, satellite dish, or otherwise, shall be located on any part of Highland Lake. Notwithstanding the foregoing, individual cellular telephones may be operated within Highland Lake, and Declarant may provide an easement or easements for the installation and location of equipment for the reception and transmission of airborne waves and signals, so long as no such equipment is not more than twenty (20) feet in height and all equipment is shielded or camouflaged from public view by landscaping and shrubbery approved by the DRC and the applicable Sub-DRC.

- 5.10 Animals.** No animal shall be allowed to be kept on a Residential Lot except ordinary domestic household pets such as cats or dogs, etc. Without prior written Master Association or applicable Sub-Association approval, said pets shall be limited to two (2) dogs or two (2) cats or one (1) dog and one (1) cat per Lot. All dogs and cats in Highland Lake shall each wear a collar identifying its owner and such owner's phone number. No dogs or cats shall be allowed to run free, and no animal shall be permitted to remain within Highland Lake in a manner that constitutes a nuisance. All dogs being walked shall be kept on leashes and all dog excrement must be immediately removed and disposed of in a sanitary manner by the person walking the dog. No commercial breeding, storage or treatment of animals shall take place within Highland Lake. The Rules and Regulations shall govern all matters relating to animals, including but not limited to whether an animal may be kept in Highland Lake.
- 5.11 Motorized Vehicles.** Self-propelled lawn mowing machinery, golf carts that are approved by the Master Association or applicable Sub-Association, and vehicles licensed by the State of North Carolina that are operated on streets for the purpose of access to and from Lots and roads outside Highland Lake, shall be authorized to operate within Highland Lake. No other motorized vehicles of any kind shall be operated within Highland Lake (e.g. no joy-riding on sidewalks, trails or roads). No improperly mufflered vehicle or other vehicle from which emanates excessive noise, smoke or vibration shall be operated within Highland Lake, regardless of whether the same is licensed or operated on a road.
- 5.12 Temporary Structures.** No mobile home, trailer, tent, shed or other structure of a temporary nature may be occupied as a residence, business or office at any time, except that prior to the applicable Release Date for a Sub-Area, Declarant may approve trailers to be occupied as construction marketing or sales offices in such Sub-Area for the purpose of the construction, sales and marketing only.
- 5.13 Recreation Equipment.** All recreation or other equipment placed on a Lot shall be screened or camouflaged, subject to such other rules and regulations promulgated by the applicable Sub-DRC, which may include the requirement of the installation of fencing.

- 5.14 Leasing.** No tenant or other non-owner occupant of a Residential Lot shall be allowed to enter into possession of any of all or any part of any structure on a Residential Lot except pursuant to a written lease. No lease of all or any part of any structure on a Residential Lot in the Traditional Neighborhood shall be for a term of less than six (6) months. Copies of such leases shall be furnished to the Master Association and applicable Sub-Association upon request..
- 5.15 Time Share.** No "time share" type occupancy, whether created by deed or otherwise, may be utilized in connection with any Lot. A Sub-Association governing a Sub-Area may prohibit in such Sub-Area other arrangements or plans similar to a time shares, including, but not limited to, time sharing arrangements, pursuant to membership agreement, tenancy in common, sale, lease, deed, rental agreement, license agreement or by any other means, pursuant to rules and regulations adopted by such Sub-Association.
- 5.16 Parking.** To the fullest extent practicable, all vehicles shall be parked in a garage, on a driveway or other designated parking area. No vehicle shall be parked on any curb or sidewalk. The Master Association or applicable Sub-Association may adopt Rules and Regulations governing parking and enforce sanctions for violation thereof.
- 5.17 Single Family Dwellings.** All Lots in the Traditional Neighborhood shall be improved and used only for Single Family Dwellings and each such dwelling shall be occupied only by a Single Family. Without limitation thereof, no Single Family Dwelling in the Traditional Neighborhood shall be occupied on an ongoing basis by more people than the number derived by multiplying the number of bedrooms in such Single Family Dwelling by two (2). For example, there shall not be more than six (6) people in a three (3) bedroom Single Family Dwelling on an ongoing basis. The Sub-Association for the Traditional Neighborhood may permit such maximum number of people occupying a Single Family Dwelling in the Traditional Neighborhood to be exceeded pursuant to standards and requirements as may be set forth in the Rules and Regulations promulgated by such Sub-Association.
- 5.18 Trash.** Each Lot Owner shall provide sanitary garbage receptacles which shall be kept in a garage or fenced enclosure to shield the same from visibility, except on the morning of pick-up. Each Lot Owner shall contract with a garbage disposal service to pick-up garbage not less then once per week or such Owner shall dispose of such garbage at the Henderson County landfill or other landfill duly licensed to receive the same. Garbage pick-up will be in alleys or if there is no alley at the back of such Owner's Lot, such pick-up will be at such location as may be designated in the applicable Rules and Regulations.
- 5.19 Hunting and Firearms.** Hunting and trapping of animal, fowl and game is prohibited, and the discharge of guns, including BB guns and pellet guns, or bows and arrows for any purpose is prohibited.
- 5.20 Construction.** There shall not be any Construction on a Lot without the prior approval of the DRC or applicable Sub-DRC as provided in VI. hereof.

- 5.21 Mail Boxes.** Whether or not located on a Lot or in a Common Area all mail boxes shall be owned by the Owners of each of the Lots to which each of the mail boxes are assigned and shall be maintained, repaired and replaced by them in the same condition and appearance and at the same location as originally installed, except for any changes approved by the DRC or applicable Sub-DRC.

## VI. DESIGN REVIEW COMMITTEES

- 6.1 The DRC.** The DRC shall consist of three (3) Owners appointed by the Directors of the Master Association. A Sub-DRC shall consist of three (3) Owners in the applicable Sub-Area appointed by the Directors of the Sub-Association governing such Sub-Area. All Owners understand and agree, by acceptance of a deed to a Lot, that the DRC and applicable Sub-DRC each have the discretion whether to approve plans for proposed Construction, which approval shall not be unreasonably withheld or delayed. It shall not be unreasonable for plans to be rejected solely due to aesthetic considerations, and the same are within the sole and absolute discretion of the DRC or the applicable Sub-DRC, as the case may be.
- 6.2 General.** The DRC and/or the applicable Sub-DRC shall publish Guidelines that shall set forth, but are not limited to, the following:
- a) Design and building requirements
  - b) Plan review procedures
  - c) Compliance requirements
  - d) Administration
  - e) Time limitations for commencing and completing Construction in the Traditional Neighborhood

No Construction on a Lot shall commence or continue if the plans have not been approved in writing by the DRC or the applicable Sub-DRC in a manner set forth by the DRC or such Sub-DRC. The DRC or any Sub-DRC may amend its Guidelines, from time to time, as it deems necessary. The DRC's or Sub-DRC's approval of the plans is not a warranty of the architect's or engineer's work that was submitted to it, and the DRC shall have no liability for any deficiencies thereof.

- 6.2.1 Cluster Home Guidelines.** The DRC and/or the applicable Sub-DRC shall publish Guidelines applicable to the Cluster Homes setting forth any special requirements or procedures applicable to the Cluster Homes.
- 6.3 Compliance.** No structure shall be occupied prior to receiving the DRC's or the applicable Sub-DRC's final compliance inspection approval, meeting all codes, and the issuance of a Certificate of Occupancy (or the like) therefor, if such Certificate is required by the State of North Carolina, Henderson County, or the Village.
- 6.4 Setbacks and Utility Easements.** The minimum required setbacks, build-to lines and utility easements in the Traditional Neighborhood shall be shown on the Plats of such

Sub-Area. Unless a utility easement is otherwise shown on a Plat, all utilities in the Traditional Neighborhood will be located in streets or alleys, except for service connections to a structure on a Lot.

- 6.5 Mini-Farm/Agricultural Property.** No modification of the exterior of any existing building or construction of any new building within the Mini-Farm/Agricultural property shall commence or continue without prior written approval of the DRC or the applicable Sub-DRC in which such building is located; said approval shall not be unreasonably withheld or delayed. Such review and approval of any building on the Mini-Farm/Agricultural property shall be limited to the exterior design only.
- 6.6 Sub-Association Design Review Committees.** Notwithstanding anything to the contrary herein contained, each Sub-Association may appoint its own Sub-DRC to administer the terms and provisions of this Article VI with respect to the Sub-Area governed by such Sub-Association. Plans and Construction approved by the applicable Sub-DRC shall not require approval by the DRC.
- 6.7 Appeals.** Any decision of the DRC or applicable Sub-DRC may be appealed to the Board of Directors of the Master Association or the applicable Sub-Association in accordance with the procedures set forth in the Guidelines published by the DRC or the applicable Sub-DRC, as the case may be.

## VII. MIXED-USE PARCELS AND CLASSIFICATION

- 7.1 Classification.** The Market Center and Town Center are Mixed-Use classification within Highland Lake. This classification shall allow commercial, institutional, residential, and live/work type buildings. Said buildings may include, but shall not be limited to, townhouse and condominium types of ownership as well as rental apartments.
- 7.2 Property Conveyed.** All deeds for Mixed-Use Parcels in the Mixed-Use classification shall include fee simple title, the Mixed-Use Parcel Easements appurtenant thereto and any structure or portion of a structure on a Mixed-Use Parcel at the time of its conveyance, or within such Mixed-Use Parcel, in the event that such Mixed-Use Parcel is a condominium unit.
- 7.3 Indivisible.** The Mixed-Use Parcel Elements shall remain undivided and no Owner may bring any action for partition with respect thereto.

## VIII. RESIDENTIAL LOTS AND CLASSIFICATIONS

- 8.1 Residential Types.** The Estate, the Estate Lots at Traditional Neighborhood, South Lake, Market Center Residences and Garden Hamlet are all Residential types within the Residential classification of Highland Lake. This classification shall allow single family residential dwellings only, both attached and detached.

- 8.2 **Property Conveyed.** All deeds for the Residential Lots shall include fee simple title, the easement rights appurtenant thereto and any structure or portion of a structure on a Residential Lot at the time of its conveyance.

### IX. MASTER ASSOCIATION, SUB-ASSOCIATIONS, AND SPECIAL DECLARANT RIGHTS

- 9.1 **Formation.** Declarant has caused the Master Association and each Existing Sub-Association to be validly formed as a non-profit corporation in accordance with the laws of the State of North Carolina. Declarant may cause a Sub-Association to be validly formed to govern The Market Center, Town Center and any Sub-Areas hereafter established in Highland Lake. Each such Sub-Association shall represent the Owners in its Sub-Area and shall be managed and operated as set forth in the respective bylaws for such Sub-Associations.
- 9.2 **Conveyance of Common Areas and Open Space.** Not later than the applicable Release Date, Declarant shall convey the Common Areas and Open Space then shown on Plats to the applicable Sub-Association and the Special Declarant Rights shall expire. If any Common Areas or Open Space are not shown on a Plat until after the applicable Release Date, Declarant shall convey the same to the applicable Sub-Association promptly after the recording of a Plat showing such Common Areas or Open Space.
- 9.3 **Special Declarant Rights.** Prior to the applicable Release Date, Declarant is vested with the Special Declarant Rights as defined in 1.30, above, for each Sub-Area. All rights and benefits accruing hereunder to Declarant may be assigned or released by Declarant at any time prior to the applicable Release Date.

### X. ASSESSMENTS

- 10.1 **General.** The Assessments for Common Expenses as described in the Act and as otherwise provided for in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots in the applicable Sub-Area as may be more specifically authorized from time to time by the Board of the Master Association and the applicable Sub-Association governing such Sub-Area.
- 10.2 **Powers.** The Master Association and each Sub-Association shall have all such powers as are enumerated herein, in its Articles of Incorporation, its Bylaws and as provided in the Act.
- 10.3 **Lien for Assessments.**
- (a) Each and every Owner of a Lot by acceptance of a deed therefor after the recording of the Original Declaration, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay to the Master Association or the applicable Sub-Association: (1) regular assessments or charges, (2) special assessments for capital improvements, and (3) road assessments as provided in 4.4 hereof, such assessments to be established and



collected as hereinafter provided or as provided in the Bylaws of the Master Association or the applicable Sub-Association.

- (b) Any Assessment levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when filed of record in the Office of the Clerk of Court of Henderson County in the manner provided in Section 47F-3-116 of the Act. The Master Association or the applicable Association may foreclose the lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. For purposes of foreclosing a lien, the Master Association or the applicable Sub-Association, as the case may be, is the "mortgagee" and "trustee", as defined by N.C. Gen. Stat. §45-21.1, of said lien with a power of sale. As the owner of the indebtedness secured by the lien, the Association or the applicable Sub-Association, acting through its Board may, in its discretion, substitute a trustee in accordance with N.C. Gen. Stat. § 45-10, by the execution of a written instrument properly recorded pursuant to Chapter 47 of the North Carolina Statutes. Fees, charges, late charges, fines, collection costs, reasonable attorneys fees, and interest charged pursuant to Sections 47F-3-102(10), (11), and (12), 47F-3-107(d), 47F-3-107.1, and 47F-3-115 of the Act, this Declaration and the Bylaws, and Rules and Regulations of the Master Association or the applicable Sub-Association are enforceable as Assessments under this Declaration.
- (c) The lien under this Section is prior to all other liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. This subsection does not affect the priority of mechanics' or materialmen's liens.
- (d) A lien for an unpaid Assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the Office of the Clerk of Superior Court; provided, that if an Owner of a Lot subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.
- (e) This Section does not prohibit separate collection actions to recover sums which are personal obligations of Owners and for which subsection (a) creates a lien or prohibit the Association taking a deed in lieu of foreclosure.
- (f) A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.
- (g) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot, obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Lot which became due prior to acquisition of title to such Lot by such

purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all Lot Owners including such purchaser, and its heirs, successors and assigns.

**10.4 Purpose of Assessments.** The Assessments levied by the Master Association and the applicable Sub-Association shall be used to pay the Common Expenses for the purposes in keeping with a nonprofit corporation as set forth in the Master Association's and the applicable Sub-Association's Articles of Incorporation. Specifically, the assessments shall be used to promote the health, safety and welfare of the Owners and residents of Highland Lake and for the improvement, maintenance and repair of the Common Areas and easements appurtenant thereto; for the protection of the community from pollution or erosion; for the enforcement of these covenants; the provision for reserve funds to maintain, repair and, if necessary replace roads, sewers and other improvements in the Common Areas, the employment of attorneys, accountants and other professionals to represent the Master Association or the applicable Sub-Association, when necessary, and for payment of local taxes, if any, insurance and special governmental assessments, if any, on or to the Common Areas, together with payment for services, if any, provided to the Owners by the Master Association or the applicable Sub-Association.

**10.5 Levy of Assessments.** The Master Association shall prepare a budget and establish the amount of the Assessments relating to the Master Association Assessments referred to in 10.5.4 hereof not later than December 1 of each year preceding the applicable year. Each Sub-Association shall prepare a budget and establish the amount of the Assessments relating to the Common Areas in its Sub-Area not later than December 1 of each year preceding the applicable year.

**10.5.1 Lot Assessment.**

- (a) Except as otherwise provided in this Section, the Lots in each Sub-Area shall be assessed in an equal amount, regardless of Lot size.
- (b) If a Common Expense is caused by the misconduct of an Owner, the applicable Sub-Association may assess that expense exclusively against such Owner's Lot.
- (c) Any Common Expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefited.
- (d) Any costs of insurance assessed as a Common Expense shall be assessed in proportion to risk and any costs of utilities assessed as a Common Expense shall be assessed in proportion to usage. The Board of Directors in its sole discretion may determine that the activities of one or more Lot Owners causes more risk and thus higher insurance premiums for the Association. In that event, such Lot Owners will be responsible for paying any increase in premium caused by their activities.

**10.5.2 Mixed-Use Parcel Assessments.** The Mixed-Use Parcels shall be assessed on an equitable basis as determined by the Master Association or the applicable Sub-Association, if any, governing such Mixed-Use Parcels.

- 10.5.3 Special Assessments.** Special Assessments for expenses that are not included in the budget, such as for unanticipated capital expenditures to clean up storm damage or to repair or replace major systems or structures which have unexpectedly failed located in Common Areas, shall be made by the Master Association of the applicable Sub-Association only after notice of the need for such is given to the Owners in Highland Lake or the Owners in the applicable Sub-Area, including a notice of an Association or Sub-Association meeting at which the same will be considered. After such notice and upon approval by the Directors of the Master Association as provided in its Bylaws or the Directors of the applicable Sub-Association as provided in its Bylaws, the Special Assessment shall become effective and due in such manner as so approved. Special Assessments are Assessments for the purpose of enforcement thereof.
- 10.5.4 Master Association Assessments.** The Master Association shall levy the Assessments for the Master Common Areas against the Lots in the Sub-Areas benefited by such Master Common Areas in accordance with the provisions of this Article. The Master Association shall also levy Assessments against all of the Lots in Highland Lake for costs and expenses authorized to be incurred by the Master Association pursuant to this Declaration, including, but not limited to, insurance premiums, costs of maintaining its corporate existence and management fees. Each of the Lots in Highland Lake shall be assessed an equal amount for the Assessments referred to in the previous sentence, regardless of size. Notwithstanding anything to the contrary contained herein, upon the request of any Sub-Association, the Master Association will bill such Sub-Association for the amounts which would otherwise be assessed by the Master Association against the Lots in the Sub-Area governed by such Sub-Association, and, in such case, the amounts so billed will be paid by such Sub-Association and not be assessed by the Master Association against the Lots in such Sub-Association.
- 10.5.5 Road Impact Fee Assessments.** The Master Association or the applicable Sub-Association may levy assessments for unpaid road impact fees as provided in 4.3 hereof.
- 10.5.6 Road Assessments.** A Sub-Association may levy road assessments on the Lots in other Sub-Areas as provided in 4.4 hereof. Each of the Lots in such other Sub-Areas shall be assessed in an equal amount for such road assessments, regardless of Lot size.
- 10.5.7 Fines, Penalties and Costs.** Fees, charges, late charges, fines, all collection costs, including reasonable attorney's fees actually incurred and interest charged against a Lot Owner pursuant to the Act, this Declaration and the Bylaws and Rules and Regulations of the Master Association and applicable Sub-Association are enforceable as Assessments for Common Expenses.
- 10.6 Methods.** The methods of Assessment shall be applied in accordance with generally accepted accounting principles, consistently applied. The determinations of Assessments by the Master Association or the Sub-Association, as the case may be, shall be binding and controlling, subject to and in accordance with the terms and provisions of this Declaration.

- 10.7 Assessment of Declarant.** Prior to the applicable Release Date for a Sub-Area, Declarant shall not be assessed for Lots owned in such Sub-Area on a per Residential Lot or per Mixed-Use Parcel basis, but shall pay \$160.00 per 16-foot wide Residential Lot (\$10.00 per frontage foot) when sold or per Mixed-Use Parcel when sold. The 16-foot wide Residential Lot increments shall be determined as follows: Estate lots shall be considered five (5) 16-foot wide Residential Lot increments, Courtyard lots shall be considered three (3) 16-foot Residential Lot increments, Garden Hamlet Lots shall be considered two (2) 16 foot wide Residential Lot increments, Traditional Neighborhood lots shall be the actual number of 16-foot lots recombined into one home site (e.g., a 48'-wide Traditional Neighborhood lot contains three increments). After the applicable Release Date, Declarant will be assessed the same as other Owners.
- 10.8 Enforcement of Assessments.** Any Assessments which are not paid when due as determined by this Declaration and the Board of the Master Association or the applicable Sub-Association, as the case may be, shall be delinquent. If an Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the date of the delinquency at the rate of the lower of (i) eighteen (18%) per annum or (ii) the maximum rate permitted by law, and the Master Association or the applicable Sub-Association may bring an action at law against the Owner or Owners personally obligated to pay the same, or foreclose the lien against the Lots of such Owner or Owners, and interest, costs and reasonable attorney's fees of any such action for collection thereof shall be added to the amount of such Assessments. Each such Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Master Association, the applicable Sub-Association and their respective agents, the rights and powers to bring all actions against such Owner personally for the collection of such charges and liens as a debt and to enforce the aforesaid charge and lien by methods available for the enforcement of such liens. The available enforcement remedies include, but are not limited to, those rights stated under the Act. The lien provided for in this Section shall be in favor of the Master Association or the applicable Sub-Association, as the case may be, and shall be for the benefit of all members of the Master Association or the applicable Sub-Association, as the case may be. The Master Association or the applicable Sub-Association, acting on behalf of its members, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, and to subrogate so much of its right to such liens as may be necessary or expedient.
- 10.9 Acceleration of Assessments.** If any Assessments, including any special Assessments, are not paid within thirty (30) days after the same become due, then the Board of the Master Association or the applicable Sub-Association, as the case may be, shall have the right to declare all installments of such Assessments for any year in question and all installments of such special assessments thereafter becoming due to be immediately due and payable and to enforce such accelerated Assessments as provided in Section 10.9 hereof.
- 10.10 Increases in Annual Assessments.** The amount of the Annual Assessments, excluding any Special Assessments, shall not exceed the amount of such Annual Assessments for

the previous year by more than fifteen (15% ) percent unless approved by a majority vote of a the Owners or their proxies at an Association meeting called for such purpose.

- 10.11 Traditional Neighborhood Reserve Account.** The Sub-Association for the Traditional Neighborhood shall establish and maintain a separate reserve for the purposes of periodic and long-term maintenance of the streets, curbs, sidewalks, alleys, storm drains and appurtenances thereto, including repairs, patching, slurry coats, repaving and any necessary replacements. Such reserve shall be kept in a segregated account and the funds in such account shall only be used for such purposes and for no other purpose whatsoever.

## XI. GENERAL PROVISIONS

- 11.1 Conflict With Laws.** No action shall be taken by Declarant, the Master Association, any of the Sub-Associations or any other Owner which is in violation of the laws of the State of North Carolina, Henderson County, or the Village, or which is contrary to any applicable rule, regulation or ordinance of any governmental or quasi-governmental body with jurisdiction over Highland Lake.
- 11.2 Inurement.** The provisions hereof shall inure to the benefit of and bind the Declarant, the Master Association, each of the Sub-Associations, all Owners and their respective heirs, executors, administrators, successors, assigns, tenants and other persons claiming by, through, or under them. The provisions of this Declaration are not intended to create and do not create any joint venture, partnership or other similar relationship among the Owners. This Declaration shall be construed in accordance with the laws of the State of North Carolina. This Declaration does not grant any rights to the public.
- 11.3 Severability.** Should any of the terms and provisions hereof be determined to be invalid or unenforceable for any reason whatsoever by any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such determination shall in no way affect any of the other provisions hereof, which are hereby declared to be severable and which will remain in full force and effect.
- 11.4 Limit.** The provisions hereof shall run with and bind Highland Lake and the Owners for a period of ten years from the date this Declaration is recorded, after which time, the term shall be automatically extended for successive periods of ten years each, unless Owners representing at least eighty (80%) of all votes held by Owners, elect not to extend the term of this Declaration. Notwithstanding the foregoing, any easements created or reserved herein shall not be affected, modified or terminated by reason of the termination of this Declaration.
- 11.5 Conflict With Sub-Declarations.** To the extent that there are any conflicts between the terms and provisions of this Declaration and the terms and provisions of any Sub-Declaration, then the terms and provisions of such Sub-Declaration shall prevail with respect to the Sub-Area covered by such Sub-Declaration.

- 11.6 Responsibility of Owners.** All Owners are responsible for having their respective dependents, invitees, guests, employees and contractors observe and comply with the provisions of this Declaration, the Guidelines and Rules and Regulations, and any violation thereof by any of them shall be deemed a violation by the Owner or Owners so responsible.
- 11.7 Votes by Owners.** There shall be one (1) vote for each Lot. If only one of the multiple Owners of a Lot is present at a meeting of the Master Association or a Sub-Association, the Owner who is present is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners are present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Such majority agreement is conclusively presumed if any one of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of that Lot. The vote allocated to a Lot may be cast pursuant to a proxy duly executed by the Owner of that Lot. If a Lot is owned by more than one person, each Owner of that Lot may vote or register protest to the casting of votes by the other Owners of that Lot through a duly executed proxy. Any such proxy executed by an Owner cannot be revoked by such Owner except by actual notice of such revocation to the person presiding over the meeting.
- 11.8 Nonwaiver.** No waiver of any of the terms, covenants, conditions and restrictions in this Declaration or of any violation of the same shall be implied by any neglect or failure of the Declarant, Master Association, any Sub-Association or any other person or entity to enforce any of such terms, covenants, conditions and restrictions on account of the violation thereof, whether or not such violation be continued or repeated subsequently, and no express waiver not shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated.
- 11.9 Committees.** The Board of Directors of the Master Association and of each Sub-Association may establish committees for various purposes. Each such committee shall be composed of Owners in Highland Lake and under the control of the Board of Directors that established it. The Chairperson of each such committee shall report on the activities of such committee at regular meetings of the Board of Directors that established it and at meetings of the association governed by such Board of Directors.

## XII. AMENDMENT

- 12. Vote Requirement.** This Declaration shall not be amended unless sixty-seven percent (67%) or more of all votes held by all Owners in Highland Lake and sixty-seven percent (67%) or more of all votes held by the Owners in the Traditional Neighborhood vote affirmatively to effect such amendment. Declarant shall have one vote for each Lot owned by Declarant in Highland Lake. Each Sub-Declaration may be amended as provided in such Sub-Declaration. Notwithstanding the foregoing, this Declaration may be amended by the affirmative votes of sixty-seven percent (67%) or more of all votes held by the Owners in the Traditional Neighborhood, but such amendment shall only be applicable to the Traditional Neighborhood and shall be evidenced by a separate

addendum to this Declaration setting forth the amended terms which apply to the Traditional Neighborhood.

### XIII. PRIVATE AGRICULTURE/FARM PROPERTY

13. **Mini-Farm/Agricultural Property.** Highland Lake, as defined in this Declaration, is not obligated to, but may, include any of the property identified as Mini-Farm/Agricultural property. This Declaration does not necessarily convey any rights to the Highland Lake Residential Lot Owners or Mixed-Use Parcel Owners regarding the Mini-Farm/Agricultural property. Any arrangements for the use of such property by Owners shall be contained in separate documents.

### XIV. THE TRADITIONAL NEIGHBORHOOD

- 14.1 **Description of Sub-Area.** As of the date of this Declaration, the Sub-Area known as the Traditional Neighborhood is legally described as Tracts 1 through 7 on Exhibit A attached hereto.
- 14.2 **Sub-Association.** Pursuant to the terms of the Original Declaration, the Declarant established the Highland Lake Residential Homeowners' Association, Inc., sometimes herein referred to as the Traditional Neighborhood Association. Such Association shall be the Sub-Association to govern the Traditional Neighborhood pursuant to the terms of this Declaration. No separate Sub-Declaration has been established for the Traditional Neighborhood, but such Sub-Association shall have the right and the obligation to enforce all of the terms and provisions of this Declaration with respect to the Traditional Neighborhood, including, but not limited to, levying of assessments, maintaining Common Areas, establishing a Sub-DRC, and promulgating and Rules and Regulations, from time to time.

### XV. THE MARKET CENTER

- 15.1 **Description of Sub-Area.** As of the date of this Declaration, no part of Highland Lake has been subdivided by a recorded Plat for the Market Center. Declarant reserves the right to subdivide land for the Market Center and to record Plats thereof, from time to time.
- 15.2 **Governance.** If Declarant hereafter records any Plat or Plats for the Market Center such sub-divided area shall constitute a Sub-Area under the terms of this Declaration to be governed by this Declaration and the Master Association and any Sub-Association and Sub-Declaration hereafter established by the Declarant for governing such Sub-Area.

### XVI. THE GARDEN HAMLET

- 16.1 **Description of Sub-Area.** As of the date of this Declaration, the Sub-Area known as The Garden Hamlet is legally described as Tract VIII on Exhibit A attached hereto.

- 16.2 **Added Land.** Declarant may, at any time, add other land to the Garden Hamlet as provided in the Sub-Declaration for the Garden Hamlet referred to below.
- 16.3 **Sub-Association.** Declarant has established the Garden Hamlet Property Association, Inc. as the Sub-Association to govern the Garden Hamlet.
- 16.4 **Sub-Declaration.** Declarant has established the Declaration of Covenants, Restrictions, Easements, Reservations Terms and Conditions, recorded in Deed Book 1141 at Page 193, Henderson County Registry as the Sub-Declaration for the Garden Hamlet. Such Sub-Declaration may be amended from time to time as provided therein.
- 16.5 **Vacation Rentals.** Notwithstanding anything to the contrary contained in this Declaration, the Owners within the Garden Hamlet shall have the right to rent or lease the residential structures for such periods and on such terms as said Owners shall determine, including, without limitation, such rentals as shall be governed by the North Carolina Vacation Rental Act, Chapter 42A of the North Carolina General Statutes.

## XVII. SOUTH LAKE

- 17.1 **Sub-Area.** As of the date of this Declaration, the Sub-Area known as South Lake is legally described as Tract 9 on Exhibit A attached hereto.
- 17.2 **Added Land.** Declarant may, at any time increase the size of South Lake and change the number of Lots therein as provided in the Sub-Declaration for South Lake referred to below.
- 17.3 **Sub-Association.** Declarant has established the South Lake Homeowners Association of Flat Rock, Inc. as the Sub-Association to govern South Lake.
- 17.4 **Sub-Declaration.** Declarant has established the Declaration of Covenants, Restrictions, Easements, Reservations Terms and Conditions, recorded in Deed Book 1293 at Page 095, Henderson County Registry as the Sub-Declaration for South Lake. Such Sub-Declaration may be amended from time to time as provided therein.
- 17.5 **Vacation Rentals.** Notwithstanding anything to the contrary contained in the Declaration, the Owners within South Lake shall have the right to rent or lease the residential structures for such periods and in such terms as said Owners shall determine, including, without limitation, such rentals as shall be governed by the North Carolina Vacation Rental Act, Chapter 42A of the North Carolina General Statutes.

## XVIII. TOWN CENTER

- 18.1 **Description of Sub-Area.** As of the date of this Declaration, no part of Highland Lake has been subdivided by a recorded Plat for the Town Center. Declarant reserves the right to subdivide land for the Town Center and to record Plats thereof, from time to time.



- 18.2 Governance.** If Declarant hereafter records any Plat or Plats for the Town Center such sub-divided area shall constitute a Sub-Area under the terms of this Declaration to be governed by this Declaration and the Master Association and any Sub-Association and Sub-Declaration hereafter established by the Declarant for governing such Sub-Area.

### **XIX. MARKET CENTER RESIDENCES**

- 19.1 Description of Sub-Area.** As of the date of this Declaration, no part of Highland Lake has yet been subdivided by a recorded plat for the Market Center Residences. Declarant contemplates the development of Market Center Residences by the construction of up to eighteen (18) town homes, but Declarant reserves the right to subdivide the land for Market Center Residences or for such other type of residential development and record plats thereof, from time to time, in such manner as shall be approved by the Village of Flat Rock .
- 19.2 Governance.** If Declarant records a Plat or Plats for the Market Center Residences, such subdivided area shall constitute a Sub-Area under the terms of this Declaration to be governed by this Declaration and the Master Association and any Sub-Association and Sub-Declaration hereafter established by Declarant for governing such Sub-Area.

### **XX. FARM PARCEL**

- 20.1 Description of Sub-Area.** As of the date of this Declaration, no part of Highland Lake has yet been subdivided by a recorded plat for the Farm Parcel. Declarant contemplates the development of the Farm Parcel by the construction of up to thirty (30) homes on Estate Lots, but Declarant reserves the right to subdivide the land for such other type of residential development and record plats thereof, from time to time, in such manner as shall be approved by the Village of Flat Rock.
- 20.2 Governance.** If Declarant records a Plat or Plats for the Farm Parcel, such subdivided area shall constitute a Sub-Area under the terms of this Declaration to be governed by this Declaration and the Master Association and any Sub-Association and Sub-Declaration hereafter established by Declarant for governing such Sub-Area.

### **XXI. CONDITIONS TO TRANSFER**

- 21.1 Conditions.** No Lot in Highland Lake shall be conveyed, leased or otherwise transferred without compliance with each of the following conditions precedent:
- (a) **Estoppel Letter.** Prior to any such transfer, an Owner of the Lot shall apply for and obtain from the applicable Sub-Association a letter stating (i) the amounts, if any, of delinquent Assessments against such Lot and (ii) violations, if any, of the terms, covenants, conditions and restrictions of this Declaration by any of the Owners of such Lot. Such letter will be issued within ten (10) business days after such application. At the time of such application, such Owner shall furnish the names and addresses of the


transferees and such other information as the applicable Sub-Association may reasonably require.

**(b) Compliance and Payment.** Prior to any such transfer, the Owner or Owners of the Lot shall pay such delinquent Assessments in full and cure all such violations or make other arrangements acceptable to the Master Association or applicable Sub-Association.

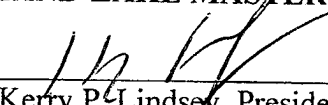
**(c) Transfer Fees.** Prior to any transfer to subsequent Owner or Owners, the then Owner or Owners of the Lot shall pay a transfer fee to the applicable Sub-Association in such amount as may be determined, from time to time, by the Board for such Sub-Association to cover administrative costs and expenses in connection with such transfer; provided, however, that such transfer fee shall have been determined and made known to the Owners prior to such transfer. Such transfer fees are enforceable against Lots and Owners in the same manner as Assessments.

**21.2 Liability of Subsequent Owners.** Prior to acquiring ownership, it shall be the obligation of the new Owner or Owners of any Lot to obtain an estoppel letter from the applicable Sub-Association stating (i) the amounts, if any, of delinquent Assessments against such Lot owing by the current Owners and (ii) violations, if any, of the terms, covenants, conditions and restrictions of this Declaration by the current Owners. Such letter will be issued within ten (10) business days after application therefor. To the extent permitted by law, such purchaser or purchasers shall be liable for payment of any such unpaid delinquent Assessments against such Lot and for curing any such violations of this Declaration, and the applicable Sub-Association may proceed against the new Owner or Owners for such payment and cure in the same manner as against the Owner or Owners who transferred the Lot to the new Owners. Also, to the extent permitted by law, the applicable Sub-Association may file a lien against such Lot for any such unpaid delinquent assessments and for any fines resulting from such violations, including transfer fees, interest and late charges and any court costs and attorneys' incurred by the applicable Sub-Association in connection therewith.

**IN WITNESS WHEREOF,** Declarant, the Master Association and each of the Existing Sub-Associations have caused the due execution of this Declaration.

 (SEAL)  
Kerry P. Lindsey, Declarant

**HIGHLAND LAKE MASTER ASSOCIATION, INC.**

By:  (SEAL)  
Kerry P. Lindsey, President

**HIGHLAND LAKE RESIDENTIAL HOMEOWNERS' ASSOCIATION, INC.**

By: Ronald Macklem (SEAL)  
 Ronald Macklem, President

**THE GARDEN HAMLET PROPERTY ASSOCIATION, INC.**

By: Kerry P. Lindsey (SEAL)  
 Kerry P. Lindsey, President

**SOUTH LAKE HOMEOWNERS ASSOCIATION, INC.**

By: Kerry P. Lindsey (SEAL)  
 Kerry P. Lindsey, President

STATE OF NORTH CAROLINA  
 COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that **KERRY P. LINDSEY**, Declarant, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 13th day of July, 2010.

(NOTARY SEAL)

My Commission Expires: 07-20-13

Martha M. On  
 Notary Public

STATE OF NORTH CAROLINA  
 COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that **Kerry P. Lindsey**, President of **HIGHLAND LAKE MASTER ASSOCIATION, INC.**, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the said Association.

Witness my hand and official stamp or seal, this 13th day of July, 2010.

(NOTARY SEAL)

My Commission Expires: 07-20-13

Martha M. On  
 Notary Public

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that **Ronald Macklem**, President of **HIGHLAND LAKE RESIDENTIAL HOMEOWNERS' ASSOCIATION, INC.**, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the said Association.

Witness my hand and official stamp or seal, this 16<sup>th</sup> day of July, 2010.

(NOTARY SEAL)

My Commission Expires: 07-20-13

Martha M. Qm  
Notary Public

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that **Kerry P. Lindsey**, President of **THE GARDEN HAMLET PROPERTY ASSOCIATION, INC.**, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the said Association.

Witness my hand and official stamp or seal, this 12<sup>th</sup> day of July, 2009.

(NOTARY SEAL)

My Commission Expires: 07-20-13

Martha M. Qm  
Notary Public

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that **Kerry P. Lindsey**, President of **SOUTH LAKE HOMEOWNERS ASSOCIATION, INC.**, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the said Association.

Witness my hand and official stamp or seal, this 12<sup>th</sup> day of July, 2009.

(NOTARY SEAL)

My Commission Expires: 07-20-13

Martha M. Qm  
Notary Public

EXHIBIT A  
TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
HIGHLAND LAKE, A PLANNED COMMUNITY

TRACT I: BEING all of that tract or parcel of land shown on Plat of Survey entitled "Unit One-Final Plat-Highland Lake" prepared by Freeland-Clinkscases & Associates, Inc. of North Carolina dated April 30, 1999 and recorded in Plat Slide 3162, Henderson County Registry.

TRACT II: BEING all of that tract or parcel of land identified as "Unit Two-Final Plat-Highland Lake" prepared by Freeland-Clinkscases & Associates, Inc. of North Carolina dated April 30, 1999 and recorded in Plat Slide 3163, Henderson County Registry and all of that tract or parcel of land identified as "Unit Two-Final Plat-Highland Lake" prepared by Freeland-Clinkscases & Associates, Inc. of North Carolina dated April 18, 2000 and recorded in Plat Slide 3428, Henderson County Registry.

TRACT III: BEING all of that tract or parcel of land identified as "Unit Three-Final Plat-Highland Lake" prepared by Freeland-Clinkscases & Associates, Inc. of North Carolina dated September 1, 1999 and recorded in Plat Slide 3365, Henderson County Registry.

TRACT IV: BEING all of those tracts or parcels of land shown on Plat of Survey entitled "Units Five through Six-Final Plat-Highland Lake" dated June 29, 2001 and prepared by Freeland-Clinkscases & Associates, Inc. of North Carolina and recorded in Plat Slide 4207, Henderson County Registry as modified by Plat of Survey entitled "Block 12, Lots 9-15 Highland Lake" prepared by Freeland-Clinkscases & Associates, Inc. of North Carolina and recorded in Plat Slide 4456, Henderson County Registry and as further modified by Plat of Survey entitled "Plat Of Survey For Highland Lake showing Unit 1, Unit 2, and Unit 3, Lots 1-8, and portion Of Lot 9, Block 10, Unit 6, Highland Lake" prepared by Freeland-Clinkscases & Associates, Inc. of North Carolina and recorded in Plat Slide 5537, Henderson County Registry.

TRACT V: BEING all of those tracts or parcels of land identified as "Units Seven through Eight-Final Plat-Highland Lake" dated August 14, 2000, showing a last revision date of July 27, 2004, prepared by Freeland-Clinkscases & Associates, Inc. of NC and recorded in Plat Slide 5078, Henderson County Registry as modified by Plat of Survey entitled " Being Lots 13-15 and portion of Open Space, Block 15, Unit 7, Highland Lake" prepared by Freeland-Clinkscases & Associates, Inc. of North Carolina and recorded in Plat Slide 5544, Henderson County Registry.

TRACT VI: BEING all of that tract or parcel of land identified on Plat Of Survey entitled "Unit 9-Final Plat-Major Subdivision-The Garden Hamlet at Highland Lake" dated March 8, 2010, prepared by Freeland-Clinkscases & Associates, Inc. of NC and recorded in Plat Slide 8010, Henderson County Registry.

TRACT VII: BEING all of that tract or parcel of land shown on Plat Of Survey entitled "Amended Site Plan Unit Ten-Highland Lake" dated April 11, 2005, prepared by Freeland-Clinkscates & Associates, Inc. of North Carolina and recorded in Plat Slide 5478, Henderson County Registry as modified by Plat of Survey entitled " Being Lots 13-15 and portion of Open Space, Block 15, Unit 7, Highland Lake" prepared by Freeland-Clinkscates & Associates, Inc. of North Carolina and recorded in Plat Slide 5544, Henderson County Registry, as further modified by Plat of Survey entitled " Plat of Survey for Real Places, LLC Being a Asbuilt and Recombination of Lot 3 and 4 of Highland Lake, Phase 10 to create Lot 4A and 4B" prepared by Freeland-Clinkscates & Associates, Inc. of North Carolina and recorded in Plat Slide 6355, Henderson County Registry as further modified by Plat of Survey entitled "Plat of Survey for Real Places, LLC Being an Asbuilt and Recombination of a portion of Lot 2, with the remaining portion of Lot 3, Highland Lake, Unit 10" prepared by Freeland-Clinkscates & Associates, Inc. of North Carolina and recorded in Plat Slide 6598, Henderson County Registry as further modified by Plat of Survey entitled "Plat of Survey for Real Places, LLC Being an Asbuilt and Recombination of Lot 4 and 5 of Highland Lake, Phase 10" prepared by Freeland-Clinkscates & Associates, Inc. of North Carolina and recorded in Plat Slide 6896, Henderson County Registry, as further modified by Plat of Survey entitled "Minor Subdivision Lots 1A and 1B, Unit 10, Highland Lake" prepared by Freeland-Clinkscates & Associates, Inc. of North Carolina and recorded in Plat Slide 7839, Henderson County Registry.

TRACT VIII: BEING all of that tract or parcel of land identified on Plat Of Survey entitled "Unit 11-Final Plat-Major Subdivision-Highland Lake" dated December 5, 2005, prepared by Freeland-Clinkscates & Associates, Inc. of NC and recorded in Plat Slide 5863, Henderson County Registry.

TRACT IX: BEING all of that tract or parcel of land identified on Plat Of Survey entitled "Unit 9-Final Plat-Major Subdivision-The Garden Hamlet at Highland Lake" dated March 8, 2010, prepared by Freeland-Clinkscates & Associates, Inc. of NC and recorded in Plat Slide 8010, Henderson County Registry.

EXCLUDING FROM THE ABOVE DESCRIBED PROPERTY all that property shown on that Plat Of Survey entitled "Minor Subdivision For Kerry Lindsey" being Lot 14 of Unit 10 as recorded in Plat Slide 4801 and that Plat Of Survey entitled "recombination Of Lots 13 and 14, Unit 10 recorded in Plat Slide 7093, Henderson County Registry.

It is further intended that the property described herein, for the purposes of this Amended and Restated Declaration, shall contain such property as may be included in one or more additional Plat Slides recorded, modifying or amending the Plat Slides referred to hereinabove.

**AMENDED AND RESTATED  
BYLAWS OF THE HIGHLAND LAKE  
MASTER ASSOCIATION, INC.**

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## ARTICLE I

### General Matters

- 1.1 **Definitions.** All terms defined in the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Highland Lake, dated JULY 9, 2010 (hereinafter referred to as the "Declaration") shall be deemed similarly defined herein and may be used without further definition.
- 1.2 **Master Association.** The Highland Lake Master Association, Inc., sometimes herein referred to as the Association, is a North Carolina non-profit corporation and shall have all powers incident thereto as provided in N. C. G. S. 55A and as provided in the Act.
- 1.3 **Applicability of Bylaws.** The provisions of these Bylaws are applicable to all of Highland Lake, including, but not limited to, all Sub-Areas, Lots, Residential Lots, Mixed-Use Parcels, Mini-farm/Agricultural property and Common Areas in Highland Lake and the occupancy and use thereof.
- 1.4 **Subject to Bylaws.** All Owners, invitees, licensees, tenants, agents, their employees, or any other person who occupies or uses Highland Lake or any part thereof in any manner, are subject to the provisions of these Bylaws and to Rules and Regulations and Guidelines adopted, from time to time, pursuant to the Declaration or these Bylaws.
- 1.5 **Acceptance of Bylaws.** The acquisition, rental, occupancy or use of any Lot or Common Area shall constitute acceptance of these Bylaws, the Declaration, Rules and Regulations and Guidelines and amendments thereto and an agreement to comply therewith.
- 1.6 **Administration.** Except as otherwise provided in the Declaration, and subject to such responsibilities as are delegated to the Sub-Associations, the Association will have the responsibility of administering Highland Lake, approving the annual budget thereof, establishing the amount of and collecting the Assessments, and managing Highland Lake or arranging for its management by a management agent. Except as otherwise provided in these Bylaws, decisions and resolutions of the Association shall require approval of not less than sixty-five percent (65%) of all of the Directors of the Association.

## ARTICLE II

### Rights of Owners

- 2.1 **Rights of Owners at Directors' Meetings.** Owners shall have the right to attend the Directors' meetings, other than working sessions those meetings determined (before or during the meeting) by the Directors to be executive sessions, the

subject matter of which is deemed not appropriate for general attendance. Owners shall be provided a reasonable opportunity to address any Directors' meeting, other than working sessions and executive sessions, but control of the meeting shall always remain with the Directors. Discussions may be closed on an issue at any time by a decision of the majority vote of the Directors, and a meeting may be declared to be in executive session at any time by a majority vote of the Directors present.

### ARTICLE III

#### Board of Directors

- 3.1 Directors.** The affairs of the Association shall be governed by a Board of Directors that shall be composed as follows:
- a) Three of the Directors shall be Owners of Lots in the Traditional Neighborhood who are then serving as Directors of the Sub-Association for the Traditional Neighborhood and who are appointed by the Board of such Sub-Association.
  - b) One of the Directors shall be an Owner of a Lot in the Garden Hamlet who is then serving as a Director of the Sub-Association for the Garden Hamlet and who is appointed by the Board of such Sub-Association.
  - c) One of the Directors shall be an Owner of a Lot in South Lake who is then serving as a Director of the Sub-Association for South Lake and who is appointed by the Board of such Sub-Association.
  - d) The Board of each Sub-Association hereafter established by Declarant in accordance with the Declaration to govern a Sub-Area of Highland Lake shall appoint Directors for the Board of the Association who are then serving as Directors of such Sub-Association. The number of Directors so appointed shall be one (1) per each forty (40) Lots in such Sub-Area. If there are less than forty (40) Lots in such Sub-Area, the number of Directors so appointed shall be one (1).
  - e) If any land is added to a Sub-Area, the Board of the Sub-Association, if any, governing such Sub-Area shall appoint one (1) additional Director of the Board for the Association per each forty (40) Lots in such additional land, who are then serving as Directors of such Sub-Association.

Notwithstanding the provisions of 3.1, above, the Declarant shall have the sole and absolute right to appoint the Directors referred to in such provisions prior to the applicable Release Dates for the Sub-Associations and Sub-Areas referred to in such provisions, and the Directors so appointed by the Declarant need not be the Owner of a Lot in any of such Sub-Associations or Sub-Areas.

- 3.2 **Term.** The term of each of the Directors of the Association shall be the same as his or her term as a Director of the applicable Sub-Association. Any Director appointed pursuant to the last sentence of 3.1.1d) or 3.1e), above, shall serve for such term as may be determined by a majority of the votes for the Market Center or the Town Center, as the case may be.
- 3.3 **Vacancies.** Vacancies on the Board of Directors caused by any reason shall be filled by the applicable Sub-Association or as otherwise provided in 3.1, above.
- 3.4 **Removal.** At any meeting, duly called, any one or more of the Directors may be removed, with or without cause, by a vote of not less sixty-seven percent (67%) of the votes of Lot Owners, and the resulting vacancy shall be filled as provided in 3.3, above.

## ARTICLE IV

### Officers

- 4.1 **Principal Officers.** The Officers of the Association shall consist of a President, Vice President, Secretary and Treasurer and such other Officers as may be determined by the Board. Any two or more offices may be held by the same person, except the offices of President, Treasurer and Secretary.
- 4.2 **Elections.** The Officers of the Association shall be elected by the Directors in executive session after each annual meeting.
- 4.3 **Removal.** Upon affirmative vote of a majority of the Directors, any Officer may be removed as an officer, with or without cause, and his or her successor shall be designated by the Directors at any regular Directors meeting.
- 4.4 **President.** The President shall preside at all meetings and shall have all of the general powers and duties which are usually vested in the office of the chief executive officer of an association.
- 4.5 **Vice-President.** A Vice-President, appointed by a majority of the Directors present, shall take the place of the President and perform the President's duties whenever the President shall be absent or unable to act. Vice-Presidents shall also perform such other duties as shall from time to time be delegated by the Board.
- 4.6 **Secretary.** The Secretary shall keep the minutes of the meetings, have charge of such books and papers as the Board may direct, and shall perform all the duties incident to the office of the Secretary of an association. The Secretary shall also use reasonable efforts to maintain all such books and papers, including documents and records, in a data retrieval system so that they will be preserved for the Association.

- 4.7 **Treasurer.** The Treasurer shall have responsibility for Association funds and securities. The Treasurer shall be responsible for keeping full and accurate accounts of all receipts and disbursements of funds belonging to the Association; and shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board. All or some of such responsibilities may be delegated to bonded manager for the Association.

## ARTICLE V

### Meetings

#### 5.1 **Types of Meetings.**

a) **Working Sessions.** Working sessions are those meetings of the Directors where no resolutions are passed or any other official business of the Association is conducted. These may be meetings of the Directors and/or committees to collect information, review reports, draft resolutions, policy statements and other documents and discuss Association business.

b) **Executive Sessions.** Executive sessions are formal meetings of the Directors in private where sensitive information is discussed and Board action may be taken, such as, but not limited to, disciplinary action of a Director, discussion of non-compliance of a contractor or other personnel related items. Executive sessions should be rare and not used for convenience sake.

c) **Regular Meetings.** Regular meetings are formal meetings of the Directors to conduct official business of the Association.

d) **Association Meetings.** Association meetings are meetings of the Directors and Owners to conduct official business of the Association. These meetings may be the annual Association meeting and any special Association meeting for which notice is given in accordance with these Bylaws.

#### 5.2 **Place of Meetings.** Regular meetings of the Directors and Association meetings shall be held at a suitable place convenient to the Directors and Owners, as a majority of the Directors shall select.

#### 5.3 **Annual Association Meeting.** The annual Association meeting shall be held in June of each year. At such meetings, the Directors shall transact such business of the Association as may properly come before them, including election of Directors by the Owners as provided in these Bylaws. If the annual Association Meeting is not held at the time provided in the preceding sentence, any business including the election of Directors, which might properly have been acted upon at such meeting may be acted upon at any subsequent Association meeting held

pursuant to these Bylaws or to a court order requiring a substitute annual Association meeting.

- 5.4 Regular Meetings.** Regular meetings of the Directors shall occur, from time to time, as scheduled by the President.
- 5.5 Special Association Meetings.** The President shall call a special Association meeting if so directed by a resolution of the Board of Directors or by a request signed by not less than a majority of the Directors or a request by Owners having not less than ten percent (10%) of the votes in the Association.
- 5.6 Notice of Association Meetings.** The Secretary or the manager for the Association shall provide a notice of each Association meetings stating the purpose thereof as well as the time and place where it is to be held to each Director and to the Owner or Owners of each Lot at least ten (10) days but not more than sixty (60) days prior to such Association meeting. Notice shall be personally delivered, transmitted by E-Mail or mailed, postage prepaid, to the Directors' and Owners' addresses on record with the Association. A notice mailed shall be deemed delivered the earlier of actual delivery or the third day following mailing. It shall be the obligation of the Directors and Owners to register with the Association their E-Mail address or mailing address for the giving of notices. If no such address is registered with the Association, such notice will be mailed to the address of the Director's or Owner's Lot and be deemed conclusively given the third day following such mailing.
- 5.7 Order of Business.** Roberts Rules of Order shall be used to govern all Association meetings and regular meetings of Directors. The order of business at all such meetings shall be as follows, unless otherwise agreed by a majority vote of the Directors present :
- a) Roll Call
  - b) Proof of Notice of Meeting or Waiver of Notice
  - c) Reading of minutes of the preceding meeting
  - d) Reports of Officers
  - e) Reports of Committees
  - f) Unfinished business
  - g) New business.
- 5.8 Waiver of Notice.** Before or at any meeting of the Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to such Director having been given notice of said meeting. Attendance by a Director at any meeting of the Directors shall be a waiver of notice by such Director of the time and place thereof. If all the Directors are present at any meeting, no notice shall be required and any business may be transacted at such meeting, except that no official business of the Association shall be transacted at any working sessions. Notices given to Owners in compliance with the provisions

of 5.5, above, shall be deemed conclusively given, whether or not such Owners actually receive such notice.

**5.9 Quorum.** At all meetings of the Directors, the presence of a majority of the Directors shall constitute a quorum for the transaction of business. If at any meeting of the Directors there is less than a quorum present, the meeting shall be adjourned. At any Association meeting, the presence of Owners or their proxies having the right to cast thirty-four percent (34%) of the votes in the Association shall constitute a quorum of the Owners.

**5.10 Votes.** Any acts of the majority of the Directors present at a meeting at which a quorum of the Directors is present shall be acts of the Board of Directors. With respect to Owners, there shall be one (1) vote for each Lot. If only one of the multiple Owners of a Lot is present at a meeting of the Association, the Owner who is present is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners are present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Such majority agreement is conclusively presumed if any one of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of that Lot. The vote allocated to a Lot may be cast pursuant to a proxy duly executed by the Owner of that Lot. If a Lot is owned by more than one person, each Owner of that Lot may vote or register protest to the casting of votes by the other Owners of that Lot through a duly executed proxy. Any such proxy executed by an Owner cannot be revoked by such Owner except by actual notice of such revocation to the person presiding over the meeting. Except as otherwise provided in the Declaration or these Bylaws, a majority vote of the Owners or their proxies present at a meeting of which a quorum of the Owners is present shall constitute the act of the Owners in approving any matters requiring their vote.

## ARTICLE VI

### General Administration

**6.1 Administration.** Subject to the terms, conditions and limitations contained in the Declaration, the Association will have the responsibility of administering the Highland Lake, approving the annual budget thereof, establishing the amount of and collecting the Assessments, and managing Highland Lake or arranging for its management by a manager.

**6.2 Powers and Duties.** The Directors shall have the powers and duties necessary for the administration of the affairs of the Association, and may do all such acts and things permitted by law, subject to the terms, conditions and limitations contained in the Declaration and these Bylaws. In addition to the duties elsewhere imposed by these Bylaws and resolutions of the Association, the Directors shall, except as

otherwise provided in the Declaration and these Bylaws, be responsible for overseeing the following:

- a) The care, upkeep, protection and maintenance of Highland Lake, including, but not limited to, all of its Common Areas;
- b) Hiring and firing of personnel for the maintenance of Highland Lake, including, but not limited to, all of its Common Areas;
- c) Fiscal management of the Association, including, but not limited to, the determination of and collection of all Assessments for Highland Lake, subject to and in accordance with the Declaration and these Bylaws.

**6.3 Delegation.** The Directors, on behalf of the Association, may contract with or employ any person, firm or corporation as an independent contractor to serve as manager for Highland Lake and the Association, at a compensation established by the Directors. Any such manager must be an independent contractor and duly licensed and all of its officers and employees handling or responsible for Association funds shall be bonded with adequate fidelity bonds.

**6.4 Fidelity Bonds.** The Directors shall require that all officers and employees of the Association responsible for collecting or disbursing Association funds be provided with adequate fidelity bonds. This provision, however, shall not require that the Treasurer be bonded if, under the terms of any management agreement in effect from time to time, the person, firm or corporation serving as the Association's manager and responsible for collecting and disbursing Association funds is required to account to the Association for said funds at least quarter-annually and is duly licensed and bonded.

**6.5 No Compensation.** None of the Directors shall receive any compensation for serving in said capacity, nor shall any of the Directors' expenses of attending a meeting be borne by the Association.

**6.6 Availability of Governing Documents.** The Association shall make available, within a reasonable time and upon reasonable request therefor, copies of the Declaration, these Bylaws, the Rules and Regulations and Guidelines and the books, records and financial statements thereof to Owners and Holders of mortgage loans on any of the Lots. The Association may charge a reasonable amount to the requesting party to compensate the Association for the copying and postage costs.

**6.7 Representation in Condemnation Proceedings.** The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of any of the Master Common Areas in Highland Lake. Each Owner appoints the Association as attorney-in-fact for said representation. Upon any such taking or acquisition, the

award or proceeds of settlement shall be payable to the Association to restore the areas adjoining such Master Common Areas to the extent reasonable, and for the general benefit of the Owners affected. No other Owners shall have any interest in any such award.

- 6.8 Execution of Legal Documents.** All agreements, contracts, deeds, leases, checks (except checks signed by a management company), notices and other instruments to be executed on behalf of the Association and approved by the Board shall be executed by any two Officers (for the purposes hereof an attesting officer shall be deemed an executing officer). In no event shall any such document be signed by only one Officer.

## ARTICLE VII

### Fiscal Management of the Association

- 7.1 Guidelines.** The Directors shall use the following guidelines in the fiscal management of the Association:

- 7.1.1 Accounts.** Receipts and disbursements of the Association shall be credited and charged to accounts under the following classifications as shall be appropriate:

- a) **Routine Maintenance and Administrative Expenses.** Current routine maintenance and administrative expenses, including a reasonable allowance for current contingencies and working funds, other than expenditures chargeable to reserves, and amounts necessary to make up any deficiencies in Common Expenses for any prior year. Any balance in this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year or shall be transferred to the reserve fund or general operating reserve hereinafter provided for, as determined by the Board.
- b) **Reserve Funds.** Reserve funds for the purpose of performing periodic long range scheduled and/or nonscheduled maintenance, replacement and repair of or to the Master Common Areas, and for such other purposes as may from time to time appear to be necessary or appropriate to the Board.
- c) **General Operating Reserve.** A general operating reserve for the purpose of providing financial stability during periods of significant financial expenditures required to accommodate unplanned capital expenditures, natural disasters and acts of God may be established from time to time if so deemed necessary by the Board. The general operating reserve may be also used to meet



deficiencies in Association receipts from time to time as may result from delinquent payment of assessments by Owners and for other contingencies.

**7.1.2 Budget.** The Directors shall adopt a budget for each calendar year that shall include the estimated funds required to provide and maintain funds for the foregoing accounts.

**7.2 Notice of Budget to Owners.** Within thirty (30) days after adoption of the proposed budget, the Board shall provide to all Owners a summary of such budget and a notice of an Association meeting for the Owners to consider ratification of such budget, including a statement that such budget may be ratified without a quorum of the Owners. The Board shall set and such notice shall specify the date for such meeting of the Owners to consider ratification of such budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after the mailing of such summary and notice. There shall be no requirement that a quorum of the Owners be present at such meeting to ratify such budget. Such budget is ratified unless at such meeting a majority of all the votes of the Owners in the Association rejects such budget. In the event such budget is rejected,, the budget last ratified for the preceding year shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

**7.3 Assessments.** The Assessments against Lots and the Owners thereof for their share of the items of the budget shall be made for the calendar year annually, in advance, on or before December 1 preceding the year for which the Assessment is made. The Assessments shall be due in annual, quarterly or monthly installments, as determined by the Board, on the first day of each calendar year, month or quarter (as applicable) during said year. In the event the annual Assessment proves to be insufficient, the budget and the amount of the Assessment may be amended at any time during the year by the Board. The unpaid Assessment, as amended, for the remaining portion of the calendar year, shall be divided by the number of full months or quarters remaining in the year and such increased amount shall be payable monthly or quarterly for the balance of the installments for the budgeted year. The Association may, but need not, invoice owners for the Assessments on a regular basis. Thus, an annual invoice could be provided, even though the amounts are to be paid quarterly or monthly. The amount of the Annual Assessments, excluding any Special Assessments, shall not exceed the amount of such Annual Assessments for the previous year by more than fifteen (15% ) percent unless approved by a majority vote of a the Owners or their proxies at an Association meeting called for such purpose. Notwithstanding anything to the contrary contained herein, upon the request of any Sub-Association, the Association will bill such Sub-Association for the amounts which would otherwise be assessed by the Association against the Lots in the Sub-Area governed by such Sub-Association, and, in such case, the amounts so billed will be paid by such Sub-Association and not be assessed by the Association against the Lots in such Sub-Association.

- 7.4 **Acceleration.** If an Owner shall fail to timely pay an installment of an Assessment, the Board may accelerate the remaining installments of the current year's Assessment upon notice to such Owner, and the then unpaid balance of the current year's Assessment shall come due upon the date stated in the notice, but not less than ten (10) days after the forwarding of the notice to the Owner.
- 7.5 **Special Assessment.** Special Assessments for expenses that are not included in the budget, such as for unanticipated capital expenditures to clean up storm damage or to repair or replace major systems or structures which have unexpectedly failed located in Master Common Areas, shall be made only after notice of the need for such is given to the Owners, including a notice of an Association meeting at which the same will be considered. After such notice and upon approval by at least sixty-seven percent (67%) of the Directors, the Special Assessment shall become effective and due in such manner as the Directors require. Special Assessments are Assessments for the purpose of enforcement thereof.
- 7.6 **Late Charges.** All unpaid Assessments shall bear a late charge computed at a rate of eighteen percent (18%) per annum, or at the highest rate allowed under North Carolina law, whichever is less, after thirty days from the time the same are due. In addition, Owners failing to timely pay an Assessment shall be liable for the collection costs of the Association, including reasonable attorney's fees, for collection of such unpaid Assessments. Unpaid Assessments may be collected by the Association in all lawful manners. During the pendency of an action brought to foreclose a lien for an unpaid Assessment on a Lot, the Owner may be required to pay a reasonable use fee for use of the Master Common Areas to the Association.
- 7.7 **Hazard Insurance.** The Directors shall be required to obtain and maintain, to the extent obtainable, adequate liability insurance for matters in and about the Master Common Areas and such other insurance as the Board shall deem reasonably appropriate. Any policies of physical damage insurance shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured, and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

## ARTICLE VIII

### Liability of Officers and Directors of the Association

- 8.1 **Indemnification.** None of the Directors or Officers of the Association or members of the DRC or members of any committee established by the Board shall be liable to any of the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The

Owners shall indemnify and hold harmless each of them from and against all contractual liability to others arising out of contracts made by them or any of them on behalf of the Association unless any such contracts shall have been made without authority from the Board or in bad faith or intentionally contrary to the provisions of the Declaration or of these Bylaws, and against liability from any decisions made by them or any of them for the Association unless such decisions shall have been made without authority from the Board or in bad faith or intentionally contrary to the provisions of the Declaration or these Bylaws. If the Directors so elect, they may purchase an insurance policy to indemnify themselves, said Officers, DRC members and Committee Members from liability arising out of such service and the premiums for such insurance will be paid for by the Association and included in Assessments.

## ARTICLE IX

### Authority of Sub-Associations

- 9.1 **Enforcement By Sub-Associations.** Notwithstanding anything to the contrary contained in these Bylaws, each Sub-Association shall, with respect to the Sub-Area of Highland Lake governed by such Sub-Association, have the first right to enforce the terms and provisions of the Declaration and these Bylaws and to perform all acts and exercise all rights, which the Association is otherwise authorized to do under the terms of the Declaration and these Bylaws, and the Association will only do the same as hereinafter provided; provided, however that the Association shall enforce the terms and provisions of the Declaration and these Bylaws relating to the Master Common Areas and to any Sub-Area which is not governed by a Sub-Association.
- 9.2 **Enforcement By Association.** The Association shall not enforce any of the terms or provisions of the Declaration or these Bylaws or perform any acts or exercise any rights under the Declaration or these Bylaws (except the terms and provisions of the Declaration and these Bylaws relating to the Master Common Areas) without giving the applicable Sub-Association not less than thirty days prior written notice thereof ("Default Notice") and the failure of such Sub-Association to cure the default specified in such Default Notice within such thirty-day period, except that notice may be shortened in the event of an emergency threatening personal injury or significant property damage; provided, however, that if such default is of such a nature that it cannot be cured within such thirty-day period, then the Association shall not act and such Sub-Association shall not be in default so long as such Sub-Association promptly commences to cure such default within such thirty-day period and continues to cure such default with all due diligence to completion.
- 9.3 **Enforcement By Owners.** No Owner shall seek to require the Association to perform any of the provisions of the Declaration or these Bylaws without giving the Association and the applicable Sub-Association not less than thirty days prior

written notice thereof ("Default Notice") and the failure of the Association or such Sub-Association to cure the default specified in such Default Notice within such thirty-day period; provided, however, that if such default is of such a nature that it cannot be cured within such thirty-day period, then such Owner shall not act and the Association or such Sub-Association shall not be in default so long as the Association or such Sub-Association promptly commences to cure such default within such thirty-day period and continues to cure such default with all due diligence to completion.

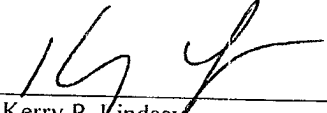
## ARTICLE X

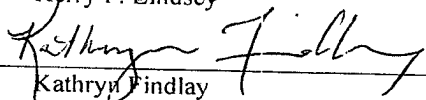
### Amendment

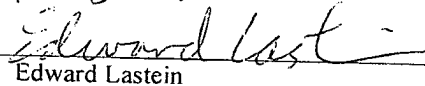
#### 10.1 Amendment of Bylaws.

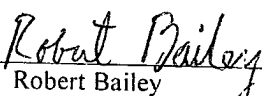
- a) **Prior Bylaws.** These Bylaws supercede and amend in their entirety the prior Bylaws of the Association, and the same has been approved by the affirmative vote of the Owners of not less than sixty-seven percent (67%) of the then existing Residential Lots and Mixed-Use Parcels.
- b) **These Bylaws.** These Bylaws may only be amended by not less than the affirmative vote of a majority of a quorum of the Owners present in person or by proxy at an Association meeting.

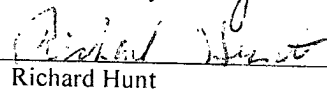
IN WITNESS WHEREOF, we being all of the Directors of the Highland Lake Master Association, Inc. have hereunto set our hands this 10<sup>th</sup> day of JULY, 2010.

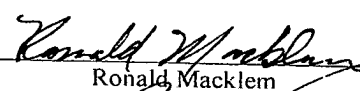
  
Kerry P. Lindsey

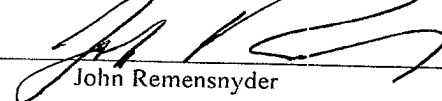
  
Kathryn Findlay

  
Edward Lastein

  
Robert Bailey

  
Richard Hunt

  
Ronald Macklem

  
John Remensnyder