

Return to: Allen, Stahl & Kilbourne, Box 80

DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS, AND PROTECTIVE COVENANTS
FOR THE SPRINGS SUBDIVISION

THIS DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS AND PROTECTIVE COVENANTS ("Declaration") for the Springs Subdivision is made and entered into this the __ day of _____, 2021 by and between Stars & Stripes 2C, LLC (hereinafter, "Declarant") a North Carolina limited liability company and all Future Owners of Lots in Springs Subdivision (hereinafter, "Subdivision" or "Development" or "Planned Community").

WITNESSETH

THAT WHEREAS, Declarant is the developer and owner of certain real property in Buncombe County North Carolina (referred to hereafter as the "Property" and/or the "Subdivision"), more particularly described on attached Exhibit A which is incorporated herein by reference; and

WHEREAS, Declarant desires, for the protection and benefit of all persons who may hereafter become Owners of Lots within the Subdivision, that the Property be developed with and subject to certain covenants and restrictions on use.

NOW, THEREFORE, and in consideration of the premises, and the mutual covenants and conditions contained herein, including the mutual advantage and benefit to the Owners in connection with ownership of property within a restricted subdivision having a uniform general scheme of development, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant does hereby make the following Declaration as to limitations, restrictions, terms, conditions, and provisions on the above-described property.

ARTICLE I

Description of Planned Community

1. Name. The name of the planned community is SPRINGS PROPERTY OWNERS ASSOCIATION, INC. (sometimes referred to herein as "Springs" or "Planned Community" or "Subdivision").
2. Location. The Planned Community is located in Buncombe County, North Carolina. The Planned Community is that real property submitted to and controlled by the N.C. Gen. Stat. Section 47F, the North Carolina Planned Community Act, as shown on Exhibit A, which is attached hereto and incorporated herein by reference.

ARTICLE II

Definitions

1. "Act" or "Planned Community Act" shall mean and refer to the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes.
2. "Architectural Review Committee" or "ARC" means the committee appointed by the Association's Board of Directors as described in Article VII of this Declaration.
3. "Assessments" means all sums levied by the Association against any Lot and its Owners as annual assessments, special assessments, specific assessments, fines, late charges, interest and attorney fees as set forth in this Declaration.
4. "Association" shall mean and refer to Springs Property Owners Association, Inc., a nonprofit corporation organized under the laws of the State of North Carolina, which will qualify under Internal Revenue Code Section 528 as a "homeowners association" eligible to file federal tax return form 1120-H, its successors and assign.
5. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.
6. "Builder" means a party, other than the Declarant, who acquires one or more Lots in the ordinary course of its business for the purpose of constructing residential dwellings for sale to members of the public. One or more Builders may own Lots at the same time.
7. "Bylaws" shall mean and refer to the Bylaws of the Association.
8. "Cluster Mailbox Facility" means a clustered community U.S. Postal Service mailbox facility for the use of multiple Townhomes.
9. "Common Elements" or "Common Areas" shall mean and refer to i) all property specifically and expressly declared to be a Common Element by the Declarant; ii) all property designated as "Common Elements" or "Common Property" or "Common Elements as designated on any recorded Plat; iii) the entrance area as shown on any such Plat; iv) any other property designated as such herein; and v) any real property owned by the Association, other than a Lot. Common Elements specifically include any Private Road(s) and the related sidewalks, curbing, drop inlets, storm water facilities, street lighting, signage, other lighting, Monuments, markers, and the like, any Private Lines, and any Cluster Mailbox

Facilities. Identified Common Elements shall have that status notwithstanding that they have not yet been conveyed by Declarant or a Neighborhood Developer to the Association.

10. "Common Expenses" shall mean and include all sums declared Common Expenses by any specific provision of this Declaration, and shall include, without limitation, the following: real estate taxes and other governmental assessments or charges against the Common Elements; costs associated with the maintenance, repair, and improvement (but not initial construction) of the Common Elements; premiums for any and all insurance maintained by the Association, including any deductible or coinsurance amount not covered by insurance; Townhome Services and reserves for such; legal and accounting fees; employing a management company to facilitate operations of the Association; costs and expenses incurred in connection with any litigation or administrative proceeding; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements by or incurred by the Association as a result of the performance, enforcement, or amendment of any agreement or easement to which the Association is a party or to which the Common Elements, or any part of either thereof, is or may be subject including, but not limited to, amounts determined necessary for reserve funds; and indemnity payments made by the Association.

11. "Declarant" shall mean Stars & Stripes 2C, LLC, a North Carolina limited liability company, its successors and/or assigns; including any person or entity that succeeds to any Special Declarant Rights as set forth herein and in the Act.

12. "Declarant Control Period" shall mean any time during which Declarant owns real property in the Subdivision, including Lots hereinafter platted and made subject to this Declaration by a supplemental declaration. During the Declarant Control Period, except as expressly provided otherwise herein, the Declarant holds the exclusive authority to appoint and remove members of the Board of Directors and Officers.

13. "Declarant Party" or "Declarant Parties" means the Declarant's managers, members, employees, agents, independent contractors (including both general contractors and subcontractors), suppliers, visitors, licensees and invitees and those of any affiliate of the Declarant.

14. "Detached Single-Family Dwelling" means a residential dwelling structure which does not share a Party Wall with at least one other residential dwelling structure.

15. "Detention Pond" shall mean a stormwater best management practices facility, commonly referred to as "detention ponds" or "BMP." The term does not include temporary erosion control measures. Any Detention Ponds may be relocated or otherwise modified in the future by Declarant or a Neighborhood Developer on their respective portions of the Property.

16. "Directors" shall mean and refer to the members of the Board of Directors of the Association.

17. "Documents" or "Governing Documents" shall mean the Declaration, Plats and Deeds recorded and filed for real property making up the Planned Community, the Articles of Incorporation of the Springs Property Owners Association, Inc., the Bylaws and any rules and regulations as may be promulgated or amended from time to time. Any exhibit, schedule, or certification accompanying a Document is part of that Documents.

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

19. "Entrance Street" means the existing Walnut Springs Drive which runs from the public right-of-way known as Old Marshall Highway (NC SR 1839) through an existing townhome community which is not subject to this Declaration and provides access to the other portions of the Property. At the time this Declaration is filed of public record, the Entrance Street is a Private Street.

20. "Government Sponsored Mortgage Entity" means any of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association, U.S. Department of Veterans Affairs, U. S. Department of Housing and Urban Development, and any subsequently created an affiliate or replacement entity which insurers, provides a secondary market for, or otherwise facilitates consumer home loans.

21. "Guidelines" shall mean and refer to any architectural and landscaping guidelines and requirements promulgated by the Declarant, the Board of Directors, or the Architectural Review Committee.

22. "Initial Plat" shall mean the plat captioned "Final Subdivision Plat Subdivision Plat, Current Owner: Stars and Stripes 2C, LLC" recorded by Declarant at Book 218, Page 167, Buncombe County Registry, which delineates Phase 1 and Phase 2.

23. "Limited Common Elements" shall mean and refer to those portions of the Subdivision i) designated as being either for the exclusive use by one or more, but fewer than all of the Lot Owners, or ii) designated by Declarant in its sole and absolute discretion, as benefitting, either directly or indirectly, one or more but fewer than all of the Lot Owners.

24. "Limited Common Expenses" shall mean and include all sums declared to be Limited Common Expenses by any specific provisions of this Declaration, and shall include, without limitation, all costs expended for the care, maintenance, and upkeep of Limited Common Elements. Certain Lots within the Subdivision may be designated by Declarant as benefitting from the Limited Common Elements more so than other Lots within the Subdivision. Such Lots so designated shall pay such Limited Common Expense assessments as are fairly and proportionally allocated to those Lots for the designated Limited Common Elements.

25. "Lot" shall mean and refer to any parcel of land within the Development created as a legally subdivided and conveyable residential lot shown on any Plat hereafter recorded by Declarant or a Neighborhood Developer, and all other Lots which may be added pursuant to any expansion right of Declarant as described herein and designated for separate ownership or occupancy by a Lot Owner.

26. "Lot Owner" and/or "Owner" shall mean and refer to any person who owns fee simple title to any Lot which is part of the Development; but does not include a person having an interest in a lot solely as security for an obligation.

27. "Member" shall mean and refer to an Owner or Owners of a Lot within the Development who shall also then be a member of the Association for such period of ownership. If a Lot is owned by more than one person, then such persons collectively shall be the Member and shall be entitled to vote only the membership voting interest allocated to such Lot.

28. "Neighborhood" shall mean a separately developed residential area within the Property, whether or not governed by a Neighborhood association, in which the Owners of Lots may have common interests other than those common to all Members of the Association. Phase 1, by way of example, is a

Neighborhood.

29. “Neighborhood Assessments” shall mean assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund common assessments particularly attributable to that Neighborhood or Neighborhoods.

30. “Neighborhood Association” shall mean any owners association having concurrent jurisdiction over any part of the Property.

31. “Neighborhood Developer” means a Person that acquires all, or substantially all, of the entire Phase of the Property and proceeds to develop that Phase with infrastructure for the purpose of creating legally subdivided Lots, and Common Elements including Private Roads.

32. “Occupant” shall mean any party, whether or not an Owner or Tenant, who is regularly present upon a Lot pursuant to either express or implied license or right.

33. “Party Wall” shall mean and refer to any common or shared structural wall that functionally separates one Townhome from another.

34. “Person” shall mean a natural person, corporation, business, trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency or other legal or commercial entity.

35. “Phase 1” shall mean that portion of the Property identified as “Tract 1 - 854,315 Sq. Feet - 19.61 Acres” on the Initial Plat.

36. “Phase 2” shall mean that portion of the Property identified as “Tract 2 - 537608.66 Sq. Feet – 12.34 Acres” on the Initial Plat.

37. “Plat” shall mean (i) the Initial Plat (ii) any subsequent filed plats of the Property filed by Declarant or a Neighborhood Developer; (iii) any filed plats of additional property subjected to this Declaration; and (iv) any revision of such filed plat or plats.

38. “Political Signs” means a sign that attempts to influence the outcome of an election, including supporting or opposing any candidate or issue on an election ballot.

39. “Private Road” shall mean the road base and improvements within any road, street, or alley way shown on a Plat, and any other streets, roads or alleys constructed by Declarant or a Neighborhood Developer within the Subdivision until such time as those roads or streets are accepted by a municipality or NCDOT for public maintenance. At the time this Declaration is recorded, it is not anticipated that any of the alleyways located to the rear of Townhome Buildings will ever be accepted for public maintenance. Certain Private Roads may be dedicated for public use, other Private Roads may not be dedicated for public use.

40. “Private Line” a water or sanitary sewer line installed by Declarant or a Neighborhood Developer to serve one or more Lots which line has not been accepted for maintenance by a public utility agency or commission. Private Lines include future replacements, extensions, and reasonable modifications of such lines. Private Lines constitute Common Elements notwithstanding that such lines may benefit some, but not all, of the Lots. Private Lines do not include the portion of any line within a Lot or its appurtenant Limited Common Elements that serves only that Lot.

41. "Restrictions" or "Declaration" shall mean and refer to this Declaration of Terms, Conditions, Restrictions and Protective Covenants for Springs Subdivision, as the same may be released, amended or changed from time to time, either in whole or part, as provided for herein.

42. "Roof System" means roofing shingles or other exterior roof covering (e.g., tiles or steel panels), roofing felt or other underlay, roof sheathing, flashing, fascia, soffit, roof decking, gutters and downspouts, and boots around vents and fresh air returns. The term Roof System does NOT include any trusses, joists, other framing, or any structural component of the roof or Townhome.

43. "Special Declarant Rights" shall mean and refer to those rights defined in Chapter 47F-1-103(28) of the Act as the same are reserved herein and in the Bylaws for the benefit of Declarant.

44. "Subdivision" and/or "Development" and/or "Property" shall mean and refer only to that certain real property as described in Exhibit "A" attached hereto and by this reference incorporated herein. Declarant specifically reserves the right to subject to these Restrictions to any other real property that the Declarant may now own or that Declarant may hereafter acquire which adjoins the Property.

45. "Surface Water Control Features" means any Detention Ponds, stormwater valleys and drop inlets in the roadway and alley curbing, any other devices which control surface water flow over pervious or impervious surfaces, culverts that run beneath driveways, other underground culverts, other drop inlets, grading and swales intended to collect and channel surface water flow, and all similar features which function to direct, channel, divert, transmit, spread or collect intermittent surface water.

46. "Tenant" means any Person who is physically present in or is entitled to occupy a Lot in exchange for consideration paid to the Owner. Tenants shall not be Members of the Association, but shall, through the Owner, be entitled to certain rights and undertake certain obligations with respect to the Lot they occupy and the Subdivision.

47. "Townhome" shall mean and refer to a dwelling that is connected by one or more Party Walls to one or more other Dwellings.

48. "Townhome Building" shall mean a group of two or more Townhomes each of which shares a Party Wall with at least one other Townhome in the same Townhome Building. Each Townhome in a Townhome Building may be on a separate Lot from the other Townhomes.

49. "Townhome Services" means services, items or other benefits provided by the Association for the benefit of the Townhomes and their Owners as provided in Article XIII Section 1.

50. "Utilities" means those lines and services in the nature of electric, telephone, cat or other network fiber or cable, water, sewer and natural gas which may be laid or distributed throughout the Subdivision.

ARTICLE III

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

1. Submission of the Property and Creation of the Subdivision. Pursuant to and subject to the terms and provisions of the Act, Declarant hereby creates a Planned Community subdivision initially comprised of the Property. Declarant hereby submits all such Property to the Act and the terms of this

Declaration. Declarant reserves the right to submit additional adjoining real property to the Subdivision, as additional phases of the Subdivision known as the Springs, by the recording of a supplemental declaration subjecting such additional real property to the terms and conditions of this Declaration.

2. Designation of Lots and Common Elements: Declarant or a Neighborhood Developer may hereafter designate and identify portions of the Property that they own in fee simple on future Plats, approved by the applicable public authorities, as separate Lots and Common Elements.

3. Reservation of Special Declarant Rights: The Declarant hereby reserves unto itself and its successors in interest as Special Declarant Rights the following:

- a. Those Special Declarant Rights as set forth in Section 47F-1-103 (28) of the Act;
- b. The right, during the Declarant's Control Period, re-designate a previously designated Lot on portions of the Property then owned by Declarant as an easement or right of way for access to adjoining property within the Subdivision.

ARTICLE IV

Additions of Property to Subdivision and Neighborhoods

Subject to the terms of this Declaration, other property may become a part of the Subdivision or a Neighborhood may be created within the Subdivision in the manner set forth below:

1. Additions by Declarant. During the Declarant Control Period, Declarant shall have the right, without further consent of the Association or any other Owner, to bring the whole or any portion of any property contiguous to the Property as described in Exhibit A of this Declaration, and may subject the same to terms, restrictions and covenants contained within this Declaration. Such additions shall be made by recording a Supplemental Declaration, which shall extend the operation and effect of this Declaration and such additional property should thenceforth become a part of the Property.

2. Withdrawal of Property by Declarant. Declarant reserves the right to amend this Declaration during the Declarant Control Period for the purpose of removing any unsold property from the coverage of this Declaration, provided the withdrawal is not contrary to the overall, uniform scheme of the development of the Property and does not impose an unfair burden on any Neighborhood or other Lots. By way of example, the Entrance Road and any Surface Water Control Feature serving any existing Lot or Phase may not be withdrawn from the coverage of this Declaration. Such amendment will not require the consent of the Association or any other Owner. The right to remove properties from the Subdivision does not apply to Common Areas already conveyed to the Association unless such removal is in conformity with Section 47F-3-112 of the Act.

3. Creation of Neighborhood Associations by Declarant. Phase 1 is hereby designated as a Neighborhood. Declarant reserves the right to create one or more additional Neighborhoods consisting of a portion or portions of Lots contained within the Property then owned by Declarant and any Supplemental Declaration may assign such property described therein or property already submitted to the Declaration to a specific Neighborhood by name. The Lots within a particular Neighborhood may be subjected to additional covenants by the Neighborhood Developer (or the Declarant if the Neighborhood is then owned in fee simple by Declarant) and shall be mandatory members of a Neighborhood Association in addition to

the Association which may impose additional terms, conditions, restrictions and protective covenants and which may authorize the Neighborhood Associations to levy additional assessments.

ARTICLE V

Common Elements

1. Common Elements. Common Elements include all parts of the Planned Community designated as such on any recorded Plat and include any real estate, both improved and unimproved, within the Planned Community owned or leased by the Association. By way of illustration but not limitation, Common Elements include real property often called common areas, facilities, and amenities and expressly include Private Roads, Detention Ponds, and any areas designated on a Plat as "common open space," "COS," "tree save area" or like term indicating that the area is to remain generally unimproved.

2. Use of Common Elements. Each Lot Owner shall have the right to use the Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Lot Owners. The Board shall, if any question arises, determine the purpose for which a part of the Common Elements is intended for use. Any Lot Owner may delegate, in accordance with the provisions of this Declaration, the Bylaws and reasonable Rules and Regulations promulgated by the Board, the right to use the Common Elements to immediate family members living on the Lot, to a limited number of guests, or to Tenants who reside on the Lot. The Lot Owners' right to use the Common Elements shall be subject to the following:

- a. The right of the Association to promulgate and enforce all reasonable regulations governing the use of the Common Areas to ensure the safety and rights of all the Owners;
- b. The right of the Association to suspend the right to use the Common Areas (excluding Private Roads, Cluster Mailbox Facilities, and like necessities) by any Owner for a period during which any assessments against the Owner's Lot remains unpaid and for a period not to exceed sixty (60) days for any infractions of its published rules and regulations;
- c. The right of the Association to grant utility, drainage, or other easements across the Common Areas that it then owns;
- d. Any Owner who rents or leases his Lot to a Tenant shall not be entitled to use and enjoy any recreational Common Areas during the period of the tenancy, but the right to use and enjoy such shall inure to the Tenants.

3. Delegation of Use. Any Owner may delegate, subject to the terms of this Declaration and duly promulgated rules and regulations, their right of enjoyment of the Common Elements to the members of their family, occasional guests, and invitees.

4. Restriction on Transfer of Common Elements. The Association shall not seek to abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Elements, without the written approval of owners of Lots totaling eighty percent (80%) of the members of the Association. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common

Elements shall not be deemed a transfer within the meaning of this paragraph.

ARTICLE VI

Terms, Conditions, Restrictions, Protective Covenants and Other Matters

The following terms, conditions, restrictions and protective covenants are applicable to all of the Subdivision (including all Lots):

1. Uses. All Lots shall be used solely for single family residential purposes and only one (1) single family dwelling is permitted per Lot. No business or commercial activity will be permitted on or upon a Lot and no commercial structure or activity of any type shall be placed on any Lot or allowed within the Subdivision. This restriction shall not be construed so as to disallow private home offices. Home offices for private use are allowed so long as the use of such office does not generate pedestrian or vehicular traffic in conjunction with such office use that causes disturbance to the community in the sole discretion of the Association.

2. Completion of Construction. Once begun, construction and clean-up of debris on a Lot shall be completed within one (1) year from commencement of construction. A dwelling shall not be occupied until completed. A dwelling shall be deemed completed upon final inspection and approval by the applicable government inspector. The Declarant reserves the express right to extend the periods for commencement and completion of construction as Declarant in its sole and absolute discretion may determine.

3. Detached Single-Family Dwelling Size. The livable heated floor area provided in each Detached Single-Family Dwelling, if one story, shall not be less than 2000 square feet. The livable heated floor area provided in each family unit, if two stories, shall not be less than 2600 square feet. For Detached Single-Family Dwellings of two stories there shall be a minimum of 1600 square feet on the first floor. Basements, unfinished attic space, storage space, garages, porches, decks, or any area not enclosed by the main structure shall not be counted as part of the required floor space.

4. Accessory Buildings. Only one (1) accessory building may be constructed on a Lot as an accessory structure to the main residential dwelling. Such accessory building is subject to architectural control and review as set forth in Article VI of this Declaration. Such accessory building must be accessory to residential uses and shall not be rented or occupied. In no event may an accessory building be constructed upon a Lot until the construction of the main dwelling has commenced and until a separate building permit has been issued. The accessory building shall have the same style and color roof shingle, and the same color, style, and material for exterior siding, as the main dwelling on the Lot.

5. Private Garages for Detached Single-Family Dwellings. A garage, whether attached or detached from the main dwelling, must be located on the Lot in compliance with the minimum yard setbacks set forth herein. Each Detached Single-Family Dwelling shall be required to have at least a two-car garage attached to the main dwelling, but may also, with Declarant approval, have one additional garage detached from the main dwelling. Detached garage accessory buildings shall not exceed fifteen (15) feet in height.

6. Setback Requirements. No Detached Single-Family Dwelling shall be located on any Lot nearer than i) twenty-five feet (25') from the centerline of either the front or side street road right of way which adjoins a Lot; ii) fifteen feet (15') from the side Lot line; or iii) twenty-five feet (25') feet from the

rear Lot line. Any Detached Single-Family Dwelling Lot located on a cul-de-sac shall be measured fifty feet (50') from the center point of the cul-de-sac.

7. Prohibited Structures. No trailer, basement, tent, shack, garage or other outbuilding on any Lot shall be, at any time, used as a residence or for any other purpose, either temporarily or permanently, nor shall any residence or other improvement be moved onto a Lot within the Subdivision. Specifically, no mobile homes, trailers, manufactured homes, modular homes, or structures of similar construction shall be placed on or allowed to remain on any Lot. There shall be no prefabricated buildings placed upon any Lot or other property within the Development, except prefabricated components such as window and door units, roof trusses, or other such components. This Paragraph 7 does not apply to temporary construction or sales offices of a Neighborhood Developer, Builder, or their general contractors.

8. No Subdivision of Lots. There shall be no re-subdivision of any Lot so as to create an additional building lot except with the written approval of the Declarant.

9. Fences. No fence of any kind shall be erected, placed or maintained on any Lot without approval of the Declarant, the Board or the Architectural Review Committee (ARC), in accordance with the architectural review process set forth in Article VI, Paragraph of this Declaration, or as approved in any blanket Builder Approvals. No chain link fences shall be permitted within the Subdivision except: (i) as may be necessary for public safety to isolate utility boxes and dumpsters from the general public, in which case the fencing shall be constructed to provide an aesthetic appearance in keeping with the quality of the development; or (ii) for temporary storage and protection of equipment and materials employed by contractors constructing Subdivision infrastructure.

10. Nuisances and other Prohibitions. No nuisance shall be allowed in the Subdivision nor carried on upon any Lot. No person shall engage in any use, practice, or activity which is noxious, offensive or a source of annoyance to Lot Owners or which reasonably interferes with the peaceful possession and proper use of any Lot by any Lot Owner. All parts of the Subdivision shall be kept in a clean and sanitary condition and no fire hazard shall be allowed to exist. The Board, in its sole discretion, shall have the power and authority to decide what acts or actions constitute a nuisance.

11. Vehicle Restrictions. No disabled abandoned or unlicensed vehicles shall be permitted on any Lot, nor shall any vehicle be stored thereon, nor shall any repairs be permitted upon any vehicle parked upon any Lot. No trucks other than pickup trucks of one (1) ton or less shall be kept on any Lot, or within the Subdivision other than: (i) those permitted under the following Paragraph 12; and (ii) vehicles of Builders and contractors during periods of construction activity. No motorcycles, minibikes or motorized two-wheel vehicles shall be allowed, other than licensed vehicles which are used exclusively for transportation purposes, and provided that they are operated within the Subdivision only upon platted roads. All vehicles kept and operated within the Subdivision shall have properly working mufflers.

12. Parking. No street parking shall be permitted within the Subdivision, other than in designated parking spaces. No trucks of greater than one (1) ton, boats, trailers, buses, self-motorized camping vehicles, tractors or similar vehicles may be stored or regularly parked on a Lot except in a garage, or well-screened enclosure approved by the Declarant, the Association or the ARC.

13. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste and such shall not be kept outside except in sanitary containers kept from view. Such sanitary containers shall be placed in plain view only on the day garbage is to be collected and shall be removed from sight no later than 8 p.m. on the day garbage is to be collected, whether or not the garbage is actually collected.

14. Fuel Tanks. All fuel tanks or other similar storage receptacles, machines, equipment or any and all articles or conditions deemed unsightly by the Association shall be screened, in a manner approved by the Association, from view from any and all roadways and adjoining Lots.

15. Satellite Dishes, Aerials and Antennas. The Association shall allow reasonable installation and use of satellite dishes or antennas consistent with Federal Communications Commission (FCC) rules, guidelines and procedures. To the extent compatible with FCC regulations, no satellite dish or antenna should be installed in the front or side yard of any Lot and may be placed only in the rear yard of a Lot in such a manner as not to be visible from the street.

16. Solar Panels. The Association shall allow reasonable use of solar panels and other energy conservation equipment consistent with Federal and North Carolina law. A Lot Owner must receive Board or ARC approval before installing solar panels or any other energy conservation equipment. Installation of solar panels on the front facing façade of a house or on a front facing roof surface of a house is discouraged. Free-standing solar panels must be inconspicuous as possible and must be screened so that they are not visible from the street.

17. Livestock, Poultry and Other Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that animals commonly known as household pets may be kept on a Lot provided that they are not kept, bred, or maintained for any purposes other than as household pets. Kennel operations shall not be permitted. A kennel is defined as housing for more than two (2) animals. Pets must be kept in the house located on the Lot and must be leashed at all times when outside of the house. Dogs or other animals are not permitted to run unleashed through the Subdivision. All pet owners shall be responsible for properly cleaning up after their pets.

18. Cutting of Trees. No living tree greater than eight inches ("8") in diameter as measured three feet (3') from the ground shall be cut or trimmed without the express written permission of the Declarant, the Association, or the ARC. This restriction shall not apply to: (i) Neighborhood Developers; (ii) the cutting of trees or limbs where such cutting is necessary for the safe installation and maintenance of any dwelling, driveway, or parking area constructed upon any Lot or (iii) if the cutting of the tree or limbs is immediately necessary for the safety of persons or the integrity of buildings.

19. Hunting, Trapping and Discharge of Firearms. No hunting or trapping shall be permitted in the Subdivision. The use and discharge of firearms of any kind is prohibited within the Subdivision. The term "firearms" shall include BB guns, pellet guns and other firearms of all types regardless of size.

20. Window Type Air Conditioning Units. No window type heating or air conditioning units may be installed in any structure which is located on any Lot without approval of the Board or the ARC.

21. Clotheslines. No clothing lines for drying or hanging of clothes shall be erected or used on any lot, or within the Development.

22. Swimming Pools. No swimming pool may be erected without the prior approval of Declarant, the Association or the ARC; or in any event, in front of a residence or closer than twenty feet (20') of any side or rear Lot line. Any swimming pool placed upon any Lot shall be properly fenced in or enclosed in such a manner as approved by the Declarant, the Association or the ARC so as not to be unsightly or constitute a hazard.

23. Vegetable Gardens. No vegetable garden shall be allowed in the Subdivision without the prior written approval of the Declarant, the Board or the ARC.

24. Lawns. All Lots, which are not maintained as a Townhome Service, shall be properly maintained by their Owner or Occupant with grass and vegetation kept properly trimmed. Children's toys and lawn furniture shall not be left in an unsightly condition or position on the Lot.

25. Window Coverings. No unsightly window coverings visible from the exterior of the dwelling shall be allowed.

26. Signs. No sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted or affixed by any Owner on any portion of the exterior of any residence, garage or any other building constructed on any lot or on any portion of the common elements without written permission from the Declarant, the Board or the ARC, except that Lot Owners may erect a sign not to exceed 24" x 30" advertising the Owner's Lot for sale. In addition, Owners are allowed to erect one political sign with the maximum dimensions of 24" x 24" on their lot which may only be erected forty-five (45) days before an election day and must be removed seven (7) days after an election day. The Declarant, or the Declarant's agent, reserves the right to erect signs of such size and placement as shall be determined by the Declarant in the Declarant's sole discretion. Any Neighborhood Developer may also erect signs of such size and placement within its Neighborhood as it desires for the purposes of directing traffic, marketing and like purposes. A Neighborhood Developer shall also be entitled to install marketing signs on subdivision Property adjoining the right-of-way of Old Marshall Highway.

27. Limitation of Access. The Private Roads shall not be used so as to provide access to any property except the Lots within the Development. No part of a Lot shall be used for any access to any property which lies outside of the Subdivision. No other easements, rights of ways or rights of access shall be deeded, granted, or in any way given by any Lot Owner to any other person through or over any Lot so as to permit any portion of a Lot or Subdivision property to be used for access to or from any adjoining property. This paragraph shall not be construed so as to prevent Declarant from having the special right to re-designate a previously designated Lot as an easement or right of way for access to adjoining property. Declarant specifically reserves the right to establish such easements or rights of way over portions of the Property owned by Declarant as Declarant deems necessary or desirable for access to adjoining property, and such rights of way within the Subdivision shall then be considered appurtenant to such adjoining property and such adjoining property shall thereafter be deemed to be benefitted by road rights of way within the Subdivision.

28. Mailboxes and other outdoor appurtenances. There shall be no mailbox or other outdoor appurtenance other than a Cluster Mailbox Facility erected except such mailbox or outdoor appurtenance that is approved by Declarant in accordance with the architectural authority set forth in this Declaration. In no event shall any mailbox or like outdoor appurtenance be erected without the prior written approval of Declarant, the Board, or the ARC as to location height and materials. Declarant reserves the right to set such requirements or to modify the above requirements as to location, height and materials as the Declarant deem appropriate.

29. General. The Board of Directors may, from time to time, without consent of the members, promulgate, modify, or delete rules and regulations consistent with the purpose and intent of this Declaration applicable to the Lots, Common Elements, or Planned Community as a whole. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by the vote of Owners holding a majority of the total votes in the Association. Such rules and regulations may be enforced by the Association in accordance with the Act, the Declaration and By-Laws, to include but not be limited to the imposition of monetary fines and penalties.

30. Responsibility for Permitted Roof Installations. The Owner of any Townhome shall be responsible for all damages caused by the installation, existence, or removal of any dish, antenna, solar

collector, or other equipment installed on the roof of their Townhome by themselves or their predecessors in title. The Association will not be responsible for maintenance, repair, replacement or removal of such equipment, and the Townhome Owner shall hold the Association harmless and indemnify it against any damages caused by the installation, existence, or removal of such equipment.

ARTICLE VII

Architectural Control and Review

1. Membership. There is hereby established an Architectural Review Committee ("ARC") whose members will be appointed by the Declarant. The ARC will consist of at least three (3) members. The members need not have any specific professional certification, need not be members of the Association, and may be representatives of the Declarant. Declarant will select the initial membership of the ARC. In the event of future vacancies upon the ARC, Declarant shall appoint successor members. Declarant may also appoint members to terms of limited duration or replace any or all members at intervals. By written notice to the Association, Declarant may delegate its power to appoint members of the ARC to the Association. The power to appoint members of the ARC shall automatically be transferred to the Association immediately following the Declarant Control Period.

2. Duties and Powers. The ARC shall: (1) review and act upon proposals and plans submitted to it by Owners pursuant to the terms of this Declaration, (2) adopt Architectural and Site Guidelines, (3) modify the Guidelines from time to time, and (4) perform all other duties delegated to and imposed upon it by this Declaration. No Owner or Builder shall begin vertical construction upon any Lot until the ARC has approved final site and construction plans for that Lot or Townhome Building.

3. Architectural and Site Guidelines. The ARC may promulgate certain rules, guidelines and statements of policy, which will be known as the "Architectural and Site Guidelines" or, herein, the "Guidelines." The ARC may also, by majority vote, interpret the Guidelines and adopt, amend and repeal such rules, guidelines, and statements of policy and thus modify the Guidelines. At all times, the ARC shall maintain copies of the most recently adopted Guidelines in writing or digital format so that copies are available, upon request, to all Owners and Builders. The Guidelines may interpret and implement the provisions of this Declaration by detailing the standards and procedures for review, standards for building and site design, landscaping (including required minimum landscaping), lighting, and exterior materials which may be used, or are required, within the Subdivision. Guidelines may be interpretations and expansions of, but not in contradiction to, the terms of this Declaration.

4. No Retroactive Effect. Amendments to the Guidelines shall be prospective only and shall never be applied to require modifications to designs or plans previously approved.

5. Builder Blanket Approvals. Declarant and/or the ARC may enter into blanket approvals with Neighborhood Developers and/or Builders for blanket approval of prototype home or Townhome models and/or standard landscaping and improvement packages. Construction substantially complying with such blanket approvals will be exempt from further review and approval by the Association and ARC.

6. Variances. The ARC is hereby authorized and empowered to grant reasonable variances from the provisions of this Declaration or the Architectural Guidelines in order to overcome specific development problems or hardship caused by strict application of the provisions of either this Declaration or the Guidelines. Such variances, however, must not materially injure any of the Property, amenities or improvements in the Subdivision and must be made in furtherance of the spirit and purpose of this Declaration.

No variance shall be effective unless granted in writing, and depending on the nature of said variance, may be recorded with the Buncombe County Registry, as determined by the Board in its sole discretion.

7. Time for Review. Upon submission of all detail reasonably requested by the ARC (received in the office of Declarant or other office as designated by Declarant), the submitting Owner shall receive, in writing, the decision of the ARC within fifteen (15) days. Failure of the ARC to render a written decision within fifteen (15) days shall be deemed approval of the submission.

8. Certification of Approval. Upon the request of an Owner or Builder, the ARC shall confirm its approval of the Owner's plans by issuing a written letter or certificate describing the specific Lot and plans that have been approved.

9. Approval is not a Warranty. Approval of the plans submitted by any Owner or other party to the ARC shall not be construed as a certification or warranty, by either Declarant or the ARC, that: (i) the plans meet with any minimum standards of suitability for use, (ii) are acceptable under any applicable laws, (iii) conform to any other standards of quality or safety, or (iv) describe structures or development which would be safe, prudent or feasible.

ARTICLE VIII

Easements, Rights of Ways, Utilities, Phases, Rights and Responsibilities of Neighborhood Developers

1. Easements of Association. There shall exist the following easements from each Lot Owner to the Association for the benefit of the Association and each other Lot Owner (as the case may be):

- a. Easements through the Common Elements for ingress and egress for all persons making use of such Common Elements in accordance with the terms of the Documents; and
- b. Easements through the Lots, and Common Elements for maintenance, repair, and replacement of the Common Elements and Townhome Services. Use of these easements, however, for access to the Lots shall be limited to reasonable hours, except that access may be had at any time in case of emergency; and
- c. Easements through the Lots and through the Common Elements for all facilities for the furnishing of utility services, which facilities shall include, but not be limited to, conduits, drainage, plumbing, and wiring.

2. Utility Easements. There is hereby created a blanket easement upon, across, over and under all of the Planned Community for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewers, storm drainage and storm water collection facilities, gas, telephones, and electricity and a master television antenna system.

Further, an easement is hereby granted to the Association, its respective officers, agents, and employees, and to any management company selected by the Association to enter in or to cross over the Common Elements provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, drains, electrical lines, water lines, or other utilities may be installed or relocated on said Property except by a Neighborhood Developer and their contractors, or as approved by the Board.

Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement on any portion of the Common Elements without conflicting with the terms hereof. The easements provided for in this Article shall in no way affect any other recorded easement on the Planned Community.

3. Emergency Escape and Rescue Easement. An Emergency Escape and Rescue Easement is hereby imposed upon any open or paved Common Elements in favor of each and every Lot, for the benefit of: (i) the Owners and Occupants of the Lot; and (ii) all public and private emergency service personnel and vehicles, specifically including EMS, police, sheriff's personnel, and fire department personnel (collectively, the "benefited parties"). Each and every benefited party shall have the right of emergency access, ingress and regress to and from each Emergency Escape and Rescue Opening of every Townhome and the nearest Public Way. As used in this Section 3 the terms "Emergency Escape and Rescue Opening" and "Public Way" shall be given the meanings assigned to those terms in Section R3 1 0.1 of the North Carolina State Building Code: Residential Code (the "Residential Code") in effect as of the date this Declaration is filed. No permanent barrier may be constructed within any open or paved Common Elements that would create a violation of the emergency escape provisions of the Residential Code.

4. Other Easements. Each Owner, Occupant, Declarant, Neighborhood Developer, the Association, and their successors and assigns shall have the benefit or burden, as applicable, of any other easement shown on any recorded Plat of the Subdivision.

5. Rights in Private Roads. Each Owner, the Declarant, the Association, and their successors and assigns, are hereby granted the perpetual, non-exclusive right to use any Private Roads for the purpose of pedestrian and vehicular access, ingress, egress and regress to and from each Lot and the Common Elements. Any Private Roads shall also be available for the ingress, egress and regress use of the guests and invitees of Owners, Occupants, Declarant, postal authorities and mail carriers, emergency personnel and vehicles such as police, fire and ambulance and such other parties as may be authorized by the Board or required by applicable law. The private easements granted herein shall terminate as to the portions of any Private Road that are accepted for maintenance by state or municipal authorities. If a Private Road is accepted for public maintenance, such road shall no longer be a Private Road and shall no longer be maintained by the Association. Declarant, a Neighborhood Developer, or the Association may, without notice, remove any obstructions of any nature located within any Private Road (including but not limited to building materials, trees, shrubs, and mailboxes) which, in the opinion of the Declarant, Neighborhood Developer, or Association, create a safety hazard.

6. Phases, Rights and Responsibilities of Neighborhood Developers. Neighborhood Developers shall, notwithstanding any other provision of this Declaration, have the following rights (and may further delegate such rights to Builders) within their Neighborhood:

- a. To record Plats, approved by the applicable governmental authorities, creating legally subdivided Lots, streets, common open space, and other Common Elements of the Subdivision. Declarant shall have a right of approval, not to be unreasonably withheld, with regard to any proposed Common Elements which are necessary for the development or enjoyment of any portion of the Property then owned in fee simple by Declarant;
- b. To record declarations imposing easements, restrictions, and other encumbrances upon all or portions of the Phase, said declarations may provide for a Neighborhood Association;
- c. To construct and install roadways and related signage, curbing, storm water management systems, utilities, and other infrastructure reasonably necessary, or convenient, for the development of a residential Townhome neighborhood within the Phase;

- d. To install marketing signage, construct and operate model homes and sales offices, and otherwise operate a business for the development and sale of residential lots and/or Townhomes;
- e. To delegate its rights hereunder to Builders who are constructing Townhomes within the Neighborhood; and
- f. To install Cluster Mailbox Facilities for U.S. Postal Service delivery of mail to one or more Townhome Buildings (any such Cluster Mailbox Facility shall be a Common Element).

Within the Neighborhood of a Neighborhood Developer, Declarant shall have no responsibility for construction or installation of any infrastructure including streets, storm water facilities, curbing, and the like unless by virtue of express contractual agreement between Declarant and the Neighborhood Developer.

ARTICLE IX

Springs Property Owners Association, Inc.

1. Property Owners Association. Declarant does hereby establish a non-profit Corporation, which shall be known as Springs Property Owners Association, Inc. ("Association"), to manage and administer the affairs of the Subdivision in accordance with the Act. The purpose of the Association shall be to provide for the orderly enforcement of this Declaration, including, but not limited to, the maintenance, upkeep and repair of the joint rights of way within the Subdivision and any Common Elements or any other matter or area determined by the Association to be a Common Element or other area of common interest.

2. Association Membership. All Lot Owners by virtue of their ownership of a Lot in the Subdivision are members of the Springs Property Owners Association, Inc. and shall be entitled to vote on all matters upon which members of the Association are entitled to vote on pursuant to the Declaration. Subject to the provisions of the Act and the Documents, such Lot Owners shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

3. Powers and Duties. Pursuant to Section 47F-3-102 of the Act, and acting by and through its Board and/or its membership in accordance with the provisions of the Documents, the Association shall have the following powers and duties necessary for the administration of the affairs of the Subdivision which shall include, but not be limited to, the following:

- a. Adopt and amend bylaws and rules and regulations;
- b. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses from Lot Owners;
- c. Hire and discharge managing agents and other employees, agents, and independent contractors;
- d. Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the Planned Community;
- e. Make contracts and incur liabilities;

- f. Regulate the use, maintenance, repair, replacement, and modification of Common Elements;
 - g. Cause additional improvements to be made as a part of the Common Elements;
 - h. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47F-3-112 of the Act;
 - i. Grant easements, leases, licenses, and concessions through or over the common elements; Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements and for services provided to Lot Owners;
 - j. Impose reasonable charges for late payment of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer;
 - k. After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to Lots) for reasonable periods for violations of the Declaration, the Bylaws, and Rules and Regulations of the Association;
 - l. Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the Declaration or statements of unpaid assessments;
 - m. Provide for the indemnification of and maintain liability insurance for its officers, Board, directors, employees, and agents;
 - n. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and
 - o. Exercise any other powers necessary and proper for the governance and operation of the Association.
4. Right to Assign Future Income. The Association may assign its future income, including its right to receive and collect Common Expense assessments, only by the affirmative vote of Owners of Lots to which at least a majority of the votes in the Association are allocated at a meeting called for that purpose.

ARTICLE X

Assessment and Collection of Common Expenses

1. Purpose of Assessments. The assessments for Common Expenses as described in Section 47F-3-115 of the Act and as otherwise provided for in the Documents 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 Planned Community as may be more specifically authorized from time to time by the Board.

2. Apportionment of Common Expenses. Except as set forth in this Article, Common Expenses shall be assessed against all Lots in accordance with the allocated interests in the Common Expenses as set forth in this Declaration.

3. Common Expenses Attributable to Fewer than All Lots.

- a. If a Common Expense is caused by the misconduct of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner's Lot.
- b. Any Common Expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the Lots to which that limited common element is assigned, equally, or in any other proportion that the Declaration provides.
- c. Any Common Expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefited.
- d. The costs of insurance shall be assessed in proportion to risk and the costs of utilities 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 such event, the Lot Owners will be responsible for paying any increase in premium caused by their activities.
- e. 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, the Declaration, Bylaws and Rules and Regulations are enforceable as Common Expense assessments.

4. Lien for Assessments.

- a. 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 Buncombe County in the manner provided in Section 47F-3-116 of the Act. The 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 Association 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, acting through the 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 the Act. Fees, charges, late charges, fines, collection costs, reasonable attorney's 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, the Declaration, Bylaws, and Rules and Regulations, are enforceable as assessments under this Section.

- b. 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.
- c. A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) 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 Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.
- d. 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.
- e. A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.
- f. 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.

5. Computation of Operating Budget and Annual Assessment. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Planned Community during the coming fiscal year and amounts necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. The Board shall cause the budget and the annual assessments to be levied against each Lot for the coming fiscal year. Within 30 days after adoption of any proposed budget for the planned community, the Board shall provide to all the Lot Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than ten (10) not more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget and the assessment established therefrom is ratified unless at the meeting a majority of all the lot owners in the Association vote to reject the budget. Notwithstanding the foregoing, however, in the event that the membership rejects the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

6. Establishing and Maintaining Reserves. In preparing the budget as required in Section Article X, Section 5, above, the Board shall establish adequate and reasonable reserves, whether held in trust or by the Association, for the repair, replacement, reconstruction or addition of any Common Elements, and provision of the Townhome Services including but not limited to, the repair, replacement, or reconstruction of Townhome Roof Systems. All funds maintained in a contingency reserve for a specific purpose (e.g. replacement of Townhome Roof Systems) shall be held for that purpose and not be expended for any other purpose without the written approval of the majority of all the votes of the Members in the Association, unless

the Board determines that the funds held for the specified purpose materially exceed the amount reasonably required as a prudent reserve for that purpose, in which case the board may allocated such excess to any other reserve fund maintained by the Association without such written approval.

7. Personal Liability of Lot Owners. The Owner of a Lot at the time any Common Expense assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred. In addition to lien rights described in Section 4 above, the Association has the right to bring a separate collection action to enforce the personal liability of Lot owners to pay assessments.

The grantee(s) of a Lot shall be jointly and severally liable with the grantor Owner for all unpaid assessments against the latter for their proportionate share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors in its discretion. Unless otherwise provided, the annual assessment installment payments shall be late and the Lot Owner in default if not paid on or before the tenth (10th) day such installment becomes due.

8. Acceleration. If a Lot Owner is in default in payment of any assessment or charge, including, but not limited to, the regular installments of the annual assessment based on the budget, the Board of Directors may accelerate the remaining balance of the annual assessment, including regular installments based on the budget, special assessments, and specific assessments, upon ten (10) days written notice to such Lot Owner, whereupon the entire unpaid balance shall become due and payable upon the date stated in such notice.

9. No Waiver of Liability for Common Expenses. No Lot Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the common elements or by abandonment of the Lot against which the assessments are made.

10. Special Assessments.

- a. If the annual assessment proves inadequate for any year or in the event of an emergency, the Board may at any time levy a special assessment against all Owners.
- b. The Board of Directors may levy special assessments for capital improvements upon the Common Elements (but not infrastructure necessary for ordinary function of the Subdivision) and for such other matters as the Association shall determine; provided, however, prior to becoming effective any such special assessment shall be approved by the affirmative vote of a majority of all the Lot Owners at a special meeting of the Association duly called for that purpose.

11. Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of scheduled Townhome Services, replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution, if any, in an amount sufficient to meet the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required may be fixed by the Board and included within the budget and assessment as provided in Section 5 of this Article. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

12. Initial Operating Capital Contribution. The Association will be commencing operations with the sale of units. Upon initial conveyance of a unit to an Owner by either the Declarant or by a Builder, the Owner shall make an operating capital contribution of Six Hundred Dollars (\$600.00), to be paid at closing. Builders shall be exempt from this provision.

13. Interest, Late Charges and Payments. In accordance with N.C. Gen. Stat. 47F-3-115(b), the Association hereby establishes that any past due Common Expense assessment or installment thereof, past due special assessments, fines, or other past due charges shall bear interest at 18% per annum.

The Board shall set a late charge to be assessed against Lot Owners for late payment of any Common Expense assessments or installment thereof, special assessments, fines, or any other charges.

Any payments received by the Association in the discharge of a Lot Owner's obligation may be applied to the oldest balance due.

14. Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment shall be retained in the general operating funds or long-range fund of the Association in the sole discretion of the Board, and no such surplus funds shall be paid to Lot Owners nor shall such surplus funds be used as a credit to reduce future Common Expense assessments.

15. Declarant, Neighborhood Developers, and Builders Exempt from Assessments. Notwithstanding any term or provision of this Declaration which may be construed to the contrary, the assessments, charges and liens provided by this Declaration shall not apply to the Common Elements or any Lot or other property owned by the Declarant, a Neighborhood Developer or the Association, including assessments accrued on any Lots to which Declarant, Neighborhood Developer or the Association obtains title by foreclosure or deed in lieu of foreclosure. Any Lot owned by a Builder shall be exempt from assessments for a period ending on the 1st day of the eighteenth (18th) calendar month following the acquisition of the Lot by the Builder. In lieu of any obligation to pay Assessments, during the Period of Declarant Control the Declarant shall pay funds to the Association, on a calendar quarter basis, equal to the difference between expenses paid or incurred by the Association and the Assessments collected by the Association.

ARTICLE XI

Insurance

1. Insurance to be carried by Owners.
 - a. Each Owner of a Lot, other than a Builder, shall maintain property casualty insurance on the Excluded Property (defined in following Subsection 2 c. (ii)) and any other material improvements on such Owner's Lot which are not included in the Insured Townhome Property (defined in following Subsection 2 c. (i)) insured by the Association against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, wind and hail, and flood (if applicable); and the total amount of such insurance after application of any deductibles shall be not less than one hundred percent (100%) of the Restoration Costs of the insured property at the time the insurance is purchased and at each renewal date. Builders shall maintain builders risk coverage on each Townhome Building under construction until such Townhome Building qualifies for coverage by the Association as provided in following Subsection 2 c.
 - b. Liability insurance in reasonable amounts, covering all occurrences commonly insured

against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Lot.

- c. Insurance insuring personal property, additional living expense, and any other coverage obtainable to the extent and in the amount such Owner deems necessary to protect his own interest.
- d. If the insurance described in the foregoing subparagraphs is not reasonably available, the Owner promptly shall cause notice of that fact to be hand-delivered or sent by United States certified mail, return receipt requested, to the Association.
- e. Such insurance policies shall provide that:
 - i. the Association is an additional insured under the policy to the extent of the Association's insurable interest;
 - ii. the insurer waives its right to subrogation under the policy against the Association;
 - iii. no act or omission by the Association, unless acting within the scope of the Association's authority on behalf of the Owner, will preclude recovery under the policy; and
 - iv. if, at the time of a loss under the policy, there is other insurance in the name of the Association covering the same risk covered by the policy, the Owner's policy provides primary insurance.
 - v. An insurer that has issued an insurance policy under this section shall, upon written request, issue a certificate or memoranda of insurance to the Association, and any such policy shall provide the issuing insurer may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association.

Any improvement on a Lot for which insurance is required under this section which is damaged or destroyed shall be restored promptly by the Owner of such Lot unless: restoration would be illegal under any State or local health or safety statute or ordinance; or the Owners of all Lots decide not to Restore by an eighty percent (80%) vote. The Owner of a Lot shall be responsible for the cost of Restoration of any improvement on such Lot in excess of insurance proceeds received by such Owner. If an Owner fails to insure as required pursuant this section and such insurance would have covered a loss had such insurance been purchased and obtained, the Association may undertake the restoration of any improvement on the Lot and assess the Owner the cost of all such repairs.

2. Insurance to be Carried by the Association

- a. Coverage. To the extent reasonably available, the Board of Directors shall obtain and maintain insurance coverage, as a Common Expense in accordance with Section 47F-3-113 of the Act and as set forth in this Article. If such insurance is not reasonably available, and the Board of Directors determines that any insurance described herein will not be maintained, the Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners at their respective last known addresses.

- b. Property and Casualty Insurance on Common Elements. The Association shall procure and maintain property and casualty insurance on the Common Elements and any buildings constructed on the Common Elements insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage periods, for and in an amount equal to 100% of the replacement costs of all structures on the Common Elements.
- c. Property and Casualty Insurance on Townhome Shell. A blanket property insurance policy providing "special perils" coverage for the "Building Shell" of each Townhome Building once that Townhome Building is sufficiently completed and otherwise qualifies for such insurance, in an amount not less than one hundred percent (100%) of the full insurable replacement value thereof (before application of reasonable deductibles). If "special perils" coverage is not available, the Board shall obtain, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, in like amounts. The Association may additionally obtain such other property insurance for the Townhomes as the Association may determine to be necessary or desirable.
- i. The "**Building Shell**" shall consist of the following components of each Townhome Building: (a) all structural components, including the foundation, footers, pilings, girders, beams, supports, walls (including all exterior walls, weight bearing walls, Party Walls and all other walls of a Townhome) and all studs, drywall, sheetrock or gypsum board attached to such walls; all slabs pillars, columns, insulation, exterior finishes or facades attached or affixed to any of the foregoing; all floor slabs; and the Roof System and all roof trusses, roof support elements, fascia soffits, roofing materials and insulation; (b) essential and permanent installations and equipment for electrical, plumbing, and mechanical systems and all ventilation, air conditioner and heating equipment and duct work for ventilation, heating and air conditioning systems; all plumbing and electrical fixtures including HVAC and water heaters; (c) windows and doors, garage doors, skylights and exterior glass; and (d) pipes, conduits, ducts, vents, wires and other service and utility lines; all of the foregoing as shown on the construction plans used to obtain building permits for the Townhome Buildings (collectively, the "**Insured Townhome Property**").
- ii. Notwithstanding the foregoing, the Insured Townhome Property shall not include, and shall specifically exclude, the following ("**Excluded Property**"): all furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by any Owner, Tenant, guest or predecessor in interest; all additions, alterations, betterments or improvements owned, supplied or installed by any Owner, Tenant, guest or predecessor in interest; all appliances; and all window treatments within any Townhome.
- d. Liability Insurance. The Association shall maintain liability insurance in reasonable amounts covering all occurrences, commonly insured against for death, bodily injury, and property damage rising out of or in connection with the use, ownership, or maintenance of the common elements and covering the Association, the Board of Directors, Officers, and all agents and employees of the Association and all Lot Owners and persons entitled to occupy any Lot or other portion of the Planned Community.
- e. Flood insurance covering loss or damage to the insured common elements in the event they are located in Flood Zone A or V as defined by the Federal Emergency Management Agency

("FEMA"). The Association may obtain such insurance through any available governmental. Programs providing for such coverage.

- f. Pursuant to Section 47F-3-113 (b)., if the insurance described in Section 2 and 3 of this section is not reasonably available, the association promptly shall promptly cause notice of that fact to be hand-delivered or sent prepaid by Unites States mail to all lot owners. The Association may carry any other insurance it deems appropriate to protect the association or the Lot Owners.
- g. Policy Requirements. In accordance with Section 47F-3-113(c) of the Act, the insurance policies carried in accordance with above must provide that:
 - h. Each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest.,
 - i. The insurer waives its right of subrogation under the policy against any Lot Owner or members of the lot owner's household;
 - ii. No act or omission by any Lot Owner, unless acting within the scope of his or her authority on behalf of the Association, will preclude recovery under the policy; and
 - iii. If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.
- i. Association as Trustee. All such insurance coverage shall be written in the name of the Association as trustee for itself, each of the Owners, and the mortgagees of Owners, if any. The proceeds from property and casualty insurance claims shall be payable to the Association as trustee for all Lot Owners and mortgagees of Owners. It shall be the duty of the Board of Directors at least annually to conduct an insurance review to determine that the policies in force are adequate to meet the risks of the Association. Such a responsibility may be performed and shall be deemed reasonably performed by the Board requesting the Association's insurance agent to verify insurance policies in existence to meet the needs of the Association. All insurance shall run to the benefit of the Association, the respective Lot Owners, and their respective mortgagees as their interests may appear. Policies may contain reasonable deductibles and the amount thereof shall be added to the face amount of the policies in determining the amount of coverage.
- j. Certificate of Insurance. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner, mortgagee or beneficiary under a deed of trust. Such policy shall provide the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and to each Owner, mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.
- k. Other Insurance. The Board of Directors shall obtain as a Common Expense:
 - i. Worker's Compensation Insurance if and to the extent necessary to meet the requirements of North Carolina law;

- ii. Officers and Directors Liability Insurance in such amount as the Board may determine. Such insurance shall contain a cross liability endorsement;
- iii. Such other insurance as the Board of Directors may determine to be necessary.

ARTICLE XII

Damage, Repair and Reconstruction

1. Duty to Repair. In the event that all or any part of the Common Elements of the Planned Community or any Townhomes or other residences on the Lots shall be damaged or destroyed, such Townhomes or other residences on the Lots and Common Elements shall be repaired or replaced and proceeds of insurance shall be used and applied in accordance with the provisions of Section 47F-3-113 of the Act.

2. Repair and Reconstruction. With regard to Common Elements or portions of Townhome Buildings which are to be insured (e.g., the Building Shell), repaired or maintained by the Association, the Board of Directors or its duly authorized agents shall arrange for and supervise the prompt repair and restoration of the damage in accordance with the original plats and plans or reconstruction compatible with such plats and plans.

The procedure for repair and construction shall be as follows:

- a. Cost Estimates. Immediately after a fire or other casualty causing damage to the Common Elements or the Building Shell of a Townhome Building insured by the Association, the Association shall obtain reliable and detailed estimates of the cost of repairing and restoring any structures to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.
- b. Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the said estimated costs of reconstruction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, assessments shall be made against all of the Lot Owners. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as decided by the Board of Directors.
- c. Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the Plans and specifications under which the common element's structure(s) of the Planned Community was originally constructed.
- d. Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Lot Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section.
- e. Method of Disbursement. The construction fund shall be paid by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing

the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

ARTICLE XIII

Party Walls

1. General Rules to Apply. Each wall, which was built as a part of the original construction of a townhome and is placed on the dividing line between lots, is considered a party wall. General rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply.
2. Party Wall Interior. Each party wall co-owner shall be responsible for the maintenance of the surface portion of the party wall within their Townhome. All maintenance, including repairs to the paint, drywall, or other wall covering on the surface portion of the party wall within a Townhome shall be the obligation of that Owner.
3. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.
4. Non-exclusive Easement and Right of Entry. Each party wall co-owner hereby grants to the other party wall co-owner, its successors and assigns, a perpetual non-exclusive easement and right of entry over and across its respective Lot and Townhome for the purposes of performing maintenance and restoration to the party wall, provide that any such easement is exercised after prior notice, during reasonable hours, and with reasonable efforts to minimize inconvenience to the other party wall Co-Owner.
5. Destruction by Fire or Other Cause. If a party wall is destroyed or damaged by fire or other cause, any owner who has used the wall may restore it. It is the responsibility of anyone who uses the wall to contribute a fair proportion to the cost of restoration. If one owner contributed to the damage through neglect or willful acts of omissions, it is the right of other party wall owner(s) to demand the neglectful owner pay a greater proportion of the costs.
6. Failure to Repair or Maintain. If at any time any party wall co-owner fails to proceed diligently with a restoration required of it under this Declaration, then the other affected party wall Co-owner may give written notice to the Association specifying the response in which the non-performing Co-Owner is not proceeding diligently with their restoration work. If diligent performance does not proceed within thirty (30) days after the giving of the notice, then the Association may perform such restoration and may take all appropriate steps to carry out the same, including entry onto the Lot of any Lot Owner to the extend necessary to perform the restoration work. The Association shall be entitled to impose an assessment on the party wall Co-Owner responsible for the cost of such restoration.
7. Indemnification. Each party wall Co-Owner agrees to indemnify the Association and the other party wall co-owner for injury for personal or property damage, when such injuries or damage shall result from, arise out of, or be attributable to its failure to perform or comply with its duties and obligations under this Section XIII.
8. Weatherproofing. Despite any provisions in this Article, an owner who by his neglect or willful act causes a party wall to be exposed to the elements is entirely responsible for the cost of correcting the problem.

9. Right to Contribution Runs with the Land. The rights established for owners in this article will pass from one owner to the next.

ARTICLE XIII

Maintenance Responsibility

1. By the Association.
 - a. Common Elements. The Association shall maintain and keep in good repair, as a Common Expense, all Common Elements.
 - b. Townhome Units. The Association will provide exterior maintenance on each Townhome Unit that is subject to assessments as follows:
 - i. Periodically repaint all exterior painted surfaces such as siding, trim, entry doors, garage doors, and post lights;
 - ii. Repair and replace, when necessary, Townhome Roof Systems due to normal deterioration;
 - iii. Masonry repairs to chimneys, planters, and lamppost lights due to normal deterioration;
 - iv. Periodic sealing of wood decks;
 - v. Gutters and downspout maintenance and replacement;
 - vi. Concrete repairs to patios, stoops, walkways, sidewalks, and driveways;
 - vii. Water line leaks from meter to exterior foundations, and sewer connection leaks from exterior foundation to Metropolitan Sewerage District line.

The Association is NOT responsible for glass surfaces, stoops, decks or screens for decks, patios, terraces, stairs, windows and window frames, doors and detached fences, or any lawn or landscape maintenance within areas enclosed by a fence or wall.

c. Grounds. The Association shall maintain the lawns, grounds and landscaping of both Common Areas and Townhome Lots, including grass cutting, shrub planting and replacement, trees, flowers and weeds, except the Owner shall be responsible for watering the grass, plants, trees and landscaping on the Owner's Lot and to replace and of the same that die. The Association will not maintain any irrigation systems on individual Lots.

The Association shall not be responsible for repair or replacement of trees, shrubs, grass, plantings, walks, driveways or any other landscaping or improvement necessitated by installation or repairs to any utility connection to a Townhome or failure of any Lot Owner to adequately water the grass and other plantings.

2. By the Owner. Except as expressly provided otherwise here in with regard to Townhomes, every Lot Owner shall maintain, repair, and replace at his expense all portions of his home located on the Lot and shall prevent the development of any unclean, unkempt, or unsightly conditions. Each Lot Owner shall maintain, repair, and replace, when necessary, all damage to his residence and any other permanent structures located on the Lot unless the Association or its insurance coverage is responsible for remedying any such

damage. All damages to the Common Elements intentionally or negligently caused by a Lot Owner, his family, guests, invitees, agents, servants, lessees, employees, or contractors shall be repaired promptly by such Lot Owner. If the lot owner defaults in his obligations herein and if any such default is not cured by him within fifteen (15) days from written demand by the Association, the same may be cured by the Association and the cost thereof shall be assessed against the Lot owned by the subject Lot Owner. The Owners shall be responsible for maintenance and repair to all utilities and services to the Lots.

3. Restrictions on Lot Owners. No Lot Owner shall perform or cause to be performed any maintenance, repair, or replacement work upon his Lot which disturbs the rights of the other Lot Owners or jeopardizes the soundness or the safety of the Common Elements. If the Lot Owner shall cause any work so performed on the Lot, which in the sole opinion of the Board violates the terms of this paragraph, it shall be immediately corrected, and the Lot Owners shall refrain from recommencing or continuing any such work without written consent of the Board. A Lot Owner shall not repair, alter, replace, or move any of the Common Elements or Limited Common Elements without the prior written consent of the Board.

4. Alterations to Common Elements. The Board of Directors is authorized to make minor improvements or alterations to the structures located on the Common Elements as a Common Expense; however, no major or structural improvements to or alterations of the Common Elements or Limited Common Elements, or improvements or alterations in excess of Five Thousand Dollars (\$5,000.00) shall be made by the Association without first obtaining the prior approval of the membership by a majority vote of the total Association membership.

5. Responsibility for Damages. In accordance with Section 47F-3-107 of the Act, if damage for which a Lot Owner is legally responsible and which is not covered by insurance provided by the Association is inflicted on any Common Element or Limited Common Element, or the property of another Lot Owner, the Association may direct such Lot Owner to repair such damage or the Association may itself cause the repairs to be made and recover the costs thereof from the responsible Lot Owner.

If, on the other hand, damage is inflicted on any Lot by an agent of the Association in the scope of his/her activities as such agent, the Association is liable to repair such damage or to reimburse the Lot Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Lot Owner.

6. Insurance Deductibles. If the Association pays an insurance deductible involved with any insurance claim and if the claim is caused by the act or omission of a Lot Owner, or his or her immediate family member(s), guest(s), or Tenant(s), then the Lot Owner will be assessed and shall pay the amount of the deductible.

ARTICLE XIV

Enforcement Powers

1. Rules Making Authority. The Planned Community shall be used only for those uses and purposes set out in the Declaration and Bylaws. The Board of Directors shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Lots and the common elements, so long as copies of all such Rules and Regulations are furnished to all Owners; provided, however, any Rule or Regulation may be repealed by the affirmative vote or written agreement of a majority of the total Association vote at an annual or special meeting. No rule or regulation shall be in conflict with either the Declaration or the Bylaws.

2. Fining Powers. Pursuant to Sections 47F-3-102(a)(11) and 47F-3-107.1 of the Act, after notice and an opportunity to be heard, the Board shall have the power to impose fines in an amount not to exceed One Hundred Dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Act, the Declaration, Bylaws, or Rules and Regulations duly adopted pursuant thereto against Owners or occupants, which fine(s) shall constitute an assessment against the Lot in accordance with Article X hereof, and become a personal obligation of the Lot Owner, and a lien upon the property; to suspend an Owner's or occupant's right to use the common elements; and to suspend an Owner's right to vote. The failure of the Board to enforce any provision of the Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Board to do so thereafter. Additionally, Lot Owners waive and release any defense that enforcement is or may be selective.

3. Abatement and Enjoinment of Violations. In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter upon a Lot or any portion of the Common Elements to abate or remove any erection, thing, or condition which violates the Declaration, Bylaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise such abatement and an opportunity to be heard. All costs of abatement, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Additionally, the Association through the Board shall have the power to enjoin or to remedy by appropriate legal proceeding, either at law or in equity, the continuance of any violation of the Declaration, Bylaws, or Rules and Regulations. All costs of any such legal action, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner, and shall be collected as provided for herein for the collection of assessments.

4. Approval of Litigation. Certain actions by the Association shall require super-majority approval by the Owners and Declarant. For the purpose of assuring that no litigation will be commenced on behalf of the Association without the strong approval of the Owners and notwithstanding anything to the contrary otherwise stated in this Declaration or the Bylaws of the Association, without the affirmative approval of at least seventy five percent (75%) of the votes of the Owners of all Lots, the Association shall have no authority to:

- a. assert any claim against, seek an injunction or other equitable remedy against, or sue the Declarant, Neighborhood Developer, any Declarant Party, or any Builder;
- b. require any Owner to remove any improvement (or fine any Owner for the past or continuing existence of an improvement) which has been substantially completed for more than two (2) years, during which time no Notice has been given by the Board or the Architectural Review Committee that the improvement is in violation of this Declaration or the Architectural Guidelines; or
- c. assert a claim for damages against any Owner in an amount in excess of twenty-five thousand dollars (\$25,000).

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

ARTICLE XV

Enforcement Procedures

In accordance with Section 47F-3-107.1 of the Act, the Board of Directors shall not impose a fine or charge for damages against a Lot Owner or suspend a Lot Owner's planned community privileges or services unless and until the following procedure is followed:

1. Notice. If it appears that a Lot Owner is in violation of the Declaration, Bylaws, or Rules and Regulations, the Board shall give the violator written notice of the alleged violation. This notice shall state: (i) the nature of the alleged violation; (ii) the date, time and location that the violator will have the opportunity to be heard to explain why the Lot Owner is not in violation of the Declaration, Bylaws, or Rules and Regulations; (iv) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (v) that the Lot Owner has the right to be represented by an attorney at the hearing.

2. Hearing. The hearing shall be held before the Board of Directors and the violator shall be given a reasonable opportunity to be heard. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five (5) days after the decision that the violation occurs. Such fines shall be assessments secured by liens under Section 47F-3-116 of the Act. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The Board shall render its Final Decision to the Lot Owner regarding imposition of the fine or suspension of planned community privileges or services.

ARTICLE XVI

Amendment

The Declaration may be amended, to the extent permitted by applicable law, only by affirmative vote or written agreement signed by Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided, however, that such amendment must be consented to by Declarant so long as Declarant is the Owner of any Property in the Subdivision. The procedure for amendment shall follow the procedure set forth in Section 47F-2-117 of the Act. No amendment shall become effective until recorded in the office of the Register of Deeds of Buncombe County, North Carolina. Notwithstanding anything in this Section to the contrary, Declarant may, at Declarant's option, amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply with the requirements of a Government Sponsored Mortgage Entity or other similar agency. Declarant, without obtaining the approval of any other person or entity, may also make amendments or modifications hereto which are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein.

ARTICLE XVII

Condemnation

If part or all of the Planned Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 47F-1-107 of the Act.

ARTICLE XVIII

Termination

Termination of the Planned Community shall be accomplished only in accordance with Section 47F-2-118 of the Act.

ARTICLE XIX

Miscellaneous Provisions

1. Captions. The captions used in this Amended and Restated Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction or meaning of this Amended and Restated Declaration.

2. Gender. The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

3. Notice. Notices shall be in writing and shall be addressed as follows: (i) if to an Owner, to the address of his/her lot or to the email address provided to the Secretary of the Association. If an Owner fails to provide an address, the Owner will be deemed to have waived his or her voting rights until an address is provided; (ii) if to the Association, to 1123 Zonolite Road, NE, Suite 30, Atlanta, GA 30306. The Association may designate a different address for notices by giving written notice of such change of address to all Owners. Any Owner may designate a different address for notices by giving written notice of such change of address to the Secretary of the Association.

4. Invalidation and Severability. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

5. Conflict. In the event of a conflict or ambiguity between this Declaration and the Act, then this Declaration shall be deemed to govern, except in the event that the Act requires that the terms of the Act shall control, in which case the terms of the Act shall govern. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

6. Storm Water Drainage. No Owner shall install or permit any ground alteration or structure on their Lot or appurtenant Limited Common Elements which may damage or interfere with the use, maintenance, repair or replacement of any Surface Water Control Feature except to the extent such alteration in drainage pattern is approved in writing by the Association and, if applicable, the Neighborhood Developer.

7. Liability Limitations. None of Declarant, the Declarant Parties, Neighborhood Developer, Owners, or any officers, directors, agents or employees of any of them shall be personally liable for: (i) debts contracted for or otherwise incurred by the Association; (ii) any incidental or consequential damages for failure to inspect any premises, Improvements or portions thereof or for failure to repair or maintain the same; (iii) any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Common Elements, Townhome, or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board of Directors, its officers, employees and agents from and against any and all loss, cost, expense, damage,

liability, claim, action or cause of action arising from or relating to the performance by the Board of Directors of its duties and obligations, except for such resulting from the gross negligence or willful misconduct of the party to be indemnified. The Association may maintain liability insurance for members of its Board of Directors, Officers, employees and agents.

None of Declarant, the Declarant Parties, Neighborhood Developer, or the Association warrant the quality or suitability of any Common Elements for other improvements in the Subdivision.

All Owners and Occupants acknowledge that they and their invitees will use any Private Roads, walking paths, and all other Common Elements and Limited Common Elements at their own risk and do hereby release and agree to hold harmless and indemnify Declarant, the Declarant Parties, any Neighborhood Developer, and the Association from liability for any property damage or injury suffered through such use.

Each Owner and Occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property. None of the Declarant, Declarant Parties, Neighborhood Developer, or the Association shall in any way be considered insurers or guarantors of safety or security within the Subdivision, nor shall any of them be held liable for any loss or damage.

8. Construction Activities. All Owners and Occupants and other parties who use the Property hereby are placed on notice that Declarant, a Neighborhood Developer, Builders and/or their respective agents, contractors, subcontractors, licensees, and other designees, may, from time to time, conduct excavation (including blasting), construction, and other activities within the Subdivision. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Common Elements, such parties acknowledge and agree: (i) such activities shall not be deemed nuisances, or noxious or offensive activities, under this Declaration or at law generally; (ii) not to enter upon, or allow their children or other parties under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any area of the Subdivision where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or other non-working hours); (iii) that Declarant, the Declarant Parties, any Neighborhood Developer, Builders and their respective agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shareholders, directors, officers, partners, members, managers, agents and employees shall not be liable but, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (iv) that any purchase or use of any portion of the Property has been and will be made with full knowledge of the foregoing; and (v) this acknowledgment and agreement is a material inducement to Declarant and the Builders to sell, convey, lease, and/or allow the use of the Property.

9. Timeshares and Short-Term Rentals. No Townhome may be subdivided to permit time sharing or other methods of creating interval ownership without the express written consent of the Neighborhood Developer. No Townhome shall be used for rentals of less than six months, vacation rentals, or hotel-like or transient rentals in the nature of Airbnb™, VRBO™, Flipkey™, or Couchsurfing™.

10. Rezoning. For a period of twenty (20) years from the date hereof, no Owner, contract purchaser of any Lot, or any party, other than Declarant, shall apply for a rezoning or change in zoning, for any part of the Property, without the prior written consent of Declarant or the Association, which consent may be granted or withheld in the sole discretion of Declarant or the Association. This prohibition is not applicable to reasonable modifications to zoning required site plans and the like, only changes in overall zoning category.

11. Support. Every portion of a Lot and structural portion of a Townhome contributing to the support of an abutting Lot or Townhome shall be burdened with an easement of support for the benefit of such abutting Lot or Townhome; such easements include but are not limited to easements for (i) lateral and subjacent support of all Townhome exterior walls, Party Walls, structural members, Roof Systems, footings and slabs or other Improvements which support the Townhome; (ii) maintenance of shared elements such as footings, slabs and Party Walls. If Improvements on any Lot is partially or totally destroyed, and then rebuilt, the Owners of the adjoining Lots agree that minor encroachments from the adjacent damaged Townhome resulting from construction shall be permitted and that a valid easement for such encroachments shall exist.

12. Sales Offices; Model Homes. Notwithstanding any other provision of this Declaration, the Declarant, all Neighborhood Developers and Builders shall have the right to maintain sales offices and model homes for sales of Lots, Townhomes or other residences throughout the Subdivision and to relocate, discontinue and re-establish such sales offices and model homes within the Subdivision from time to time until all of the Lots have been conveyed to Owners other than a Builder.

13. Encroachments. Reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, are hereby established between each Lot and any adjacent Common Elements and between adjacent Lots due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the party claiming the benefit of such easement.

[Rest of page left intentionally blank]

IN WITNESS WHEREOF, Declarant, has caused this instrument to be signed in its company name by its duly authorized agent, as of the day and year first above written.

STARS & STRIPES, 2C, LLC



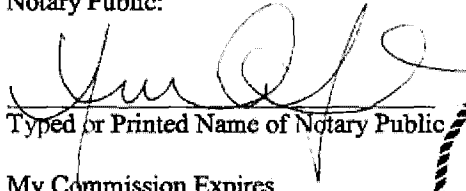
BY: DSSII HOLDING Co., LLC, a Delaware limited liability company, Manager, STARS & STRIPES, 2C, LLC, a Delaware limited liability company, by Sebastian Drapac, Manager, DSSII HOLDING CO., a Delaware limited liability company

STATE OF GEORGIA
COUNTY OF FULTON

I, a Notary Public of the State and County aforesaid, do hereby certify that Sebastian Drapac, as Manager of DSSII HOLDING CO., LLC, a Delaware limited liability company, Manager of STARS & STRIPES 2C, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

Witness my hand and official stamp or seal, this the 18 day of June 2021

Notary Public:



Typed or Printed Name of Notary Public

My Commission Expires _____

(Official Seal)

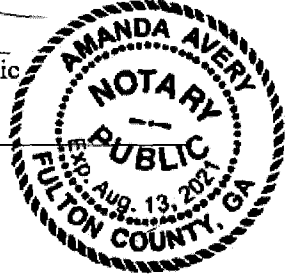


EXHIBIT A

All of Phase 1 and Phase 2 as shown on the Initial Plat.

THIS CONSENT AND SUBORDINATION is made this 18 day of June, 2021, by AMERIS BANK, a Georgia banking corporation ("Beneficiary"); the beneficiary named in that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing Filed in Book 5792, at Page 1716, in the Buncombe County Public Registry (the "Deed of Trust").

The undersigned Beneficiary does hereby consent to this Declaration and the conditions, covenants, reservations, easements and restrictions that are herein declared, reserved and imposed upon the Property and any additions to the Property. The undersigned Beneficiary hereby subordinates the Deed of Trust to this Declaration (including future amendments and supplementary declarations) so that any foreclosure or other conveyance of the Property pursuant to the Deed of Trust, shall not cut off, invalidate or otherwise affect the covenants, conditions, restrictions, easements and other terms of this Declaration.

IN WITNESS WHEREOF, the Beneficiary has caused this Consent and Subordination to be duly executed, this the 18 day of June, 2021.


BENEFICIARY:

Ameris Bank

By:

Name:

Title:

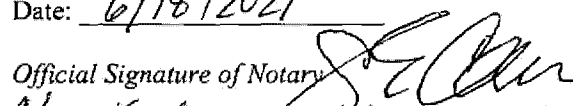

Jeff Buntin
SVP

STATE OF GA
COUNTY OF Cobb

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jeff Buntin as SVP of Ameris Bank.

Date: 6/18/2021

Official Signature of Notary


Clay E. Cannon, Notary Public

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires:

