

BK 6298 PG 528 - 560

PHASE 1 OF THE SPRINGS OF NORTH ASHEVILLE
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS

THIS DOCUMENT REGULATES OR PROHIBITS
THE DISPLAY OF POLITICAL SIGNS

Indexing information:

Grantee	Community:	PHASE 1 of THE SPRINGS OF NORTH ASHEVILLE
Grantee	Neighborhood Property Owners Association:	SPRINGS TOWNS HOA, INC.
Grantor	Declarant:	NSR WOODFIN, LLC
Grantor	Initial Builder	MADISON SIMMONS HOMES & COMMUNITIES, LLC

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Submitted electronically by "Tissue Law Offices, PLLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Buncombe County Register of Deeds.

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STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

PHASE I of
THE SPRINGS OF NORTH ASHEVILLE
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Drawn by and mail to:
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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this the 9th day of February, 2023, by NSR Woodfin, LLC, and Madison Simmons Homes & Communities, LLC which are collectively seized of the fee simple estate in that real property located in Buncombe County, North Carolina described in the following Article II, Section 1, which is referred to herein as the “**Neighborhood**.”

The Neighborhood is a portion of the Master Project and subject to the Master Declaration defined below. This Declaration concerns only the Neighborhood, and does not burden the remainder of the Master Project.

WITNESSETH THAT

In order to (1) create a restricted, structured and high quality residential environment; (2) provide for Common Elements, and amenities serving the Neighborhood; (3) assure a satisfactory integration of the Neighborhood into the Master Project; (4) enhance general development within the Neighborhood; (5) enhance the value, marketability, and quality of all property within the Neighborhood; and (6) provide for a Neighborhood Association of property owners within the Neighborhood; NSR Woodfin, LLC and Madison Simmons Homes & Communities, LLC do hereby, for the use and benefit of themselves and their successors and assigns, **DECLARE, RESERVE AND IMPOSE** upon the property described in the following Article II, Section 1, the following conditions, covenants, reservations, easements and restrictions.

ARTICLE I
Definitions

Words or phrases defined in this Article I shall be interpreted in accordance with that defined meaning whenever those words or phrases are used in this Declaration.

- a. **Additional Property** – Any real property subjected to this Declaration in addition to that 19.61 acres (approximately) described in Article II, Section 1. The procedure for adding Additional Property is described in Article II, Section 3.
- b. **Applicable Laws** – All enforceable laws, regulations and ordinances effective in the City, County, and the United States of America including all zoning regulations as well as sign, street, tree and floodway ordinances; land use, watershed development, environmental resources, and hazardous materials laws; and such other laws of all appropriate jurisdictions as may affect the Neighborhood.
- c. **Assessments** – refers to all or any of “Annual Assessments,” “Special Assessments,” “Individual Assessments,” or any other assessments by the Neighborhood Association authorized by this Declaration, as the context may indicate.

- d. **BMP System** – refers to the entire stormwater management system in the Neighborhood subject to the O&M Agreement (as it may be modified from time to time). The BMP System is subject to an Access and Maintenance Easement in favor of the Neighborhood Association and the County Filed at **Book 6266, Page 1413** (the “**BMP Access and Maintenance Easement**”). The Neighborhood Association also has maintenance duties under an agreement with the neighboring Waterstone Place subdivision for a limited portion of the Waterstone Place stormwater system that drains into the BMP System pursuant to the “Discharge, Access and Maintenance Easement” Filed at **Book 6249 Page 1473** (the “**Waterstone Place Agreement**”).
- e. **Board of Directors** – sometimes referred to herein as the “Board,” shall mean the Board of Directors of the Neighborhood Association.
- f. **Budget** – means a Fiscal Year budget approved by the Board of Directors and ratified in accordance with the Bylaws as it may be amended from time to time by the Board.
- g. **Builder** – a party, other than the Declarant, who acquires one or more Lots in the ordinary course of its business for the purpose of constructing Dwellings for sale to third parties. One or more Builders may own Lots at the same time. A Builder who holds fee simple title to a Lot shall be an Owner for all purposes hereunder except as expressly stated otherwise.
- h. **Bylaws** – Bylaws shall mean the Bylaws for the Neighborhood Association adopted by the initial Board of Directors and as amended from time to time
- i. **City** – means the municipality of Woodfin, North Carolina.
- j. **Common Open Space** – shall mean any generally unimproved areas (or improved only with lawn or other ground cover) within the Neighborhood which are dedicated by the Declarant for the benefit and use of the Owners. Common Open Space will include any areas within the Neighborhood designated on the Master Plat or Map as “Common Open Space,” “COS,” or similar label. Declarant anticipates that the majority of the Common Open Space in the Neighborhood will be available for the use and enjoyment of all occupants in the Master Project (not just Owners in the Neighborhood) and will be maintained by the Master Association.
- k. **Common Elements** - is an inclusive term meaning both (i) the Neighborhood Common Elements; and (ii) areas in the Neighborhood which are not Neighborhood Common Elements, but are “Common Elements” or “Common Areas” as defined under the Master Declaration. The Common Elements include all Common Open Space.
- l. **Neighborhood Wide Standard** – means the standard of conduct, maintenance, or other activity generally prevailing within the Neighborhood, or the minimum standards established pursuant to this Declaration, and rules and resolutions of the Neighborhood Association, whichever is a higher standard. Such standard shall be established initially by Declarant and may contain both objective and subjective elements. The Neighborhood Wide Standard may evolve as development progresses and as the needs and desires of Occupants within the Neighborhood change.
- m. **County** - means Buncombe County, North Carolina.
- n. **Declarant** – means NSR Woodfin, LLC, a North Carolina limited liability company, or an assignee of the powers granted herein to NSR Woodfin, LLC.
- o. **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.
- p. **Declaration** – This Declaration of Covenants, Conditions and Restrictions (and any future amendments or supplements) as executed and Filed by the Declarant which affects only the Neighborhood.
- q. **Dwelling** - means an attached residential structure used, or intended for use, as a residence for one or more individuals.

- r. **Entrance Monument** – shall mean any Monument or entrance sign, together with any complimentary lighting, irrigation system, landscaping and other improvements which may be constructed by the entryway to the Neighborhood by the Declarant or the Neighborhood Association to specifically identify the Neighborhood as a separate component of the Master Project.
- s. **Filed** – Recorded in the Office of the Register of Deeds for the County.
- t. **Fiscal Year** - means the calendar year until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Neighborhood Association.
- u. **Governing Documents** - this Declaration and the other documents listed in Article V, Section 4.
- v. **Government Sponsored Mortgage Entity** – means any of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Neighborhood Association, Government National Mortgage Neighborhood 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.
- w. **Improvements** – All buildings, underground installations, driveways, parking areas, fences, screens, walls, stairs, decks, porches, windbreaks, material plantings (excluding grass), poles, signs, cuts and fills, and all other structures or landscaping hardscape of every variety and nature.
- x. **Initial Builder** - means Madison Simmons Homes & Communities, LLC, a North Carolina limited liability company engaged in the construction and marketing of single-family residences. Notwithstanding that the Initial Builder is a party to this Neighborhood Declaration, the Initial Builder does not have the status of “Declarant” but is a “Builder.”
- y. **Initial Builder Lots.** The 32 Lots owned by the Initial Builder at the time this Declaration is Filed, said Lots being: 15a, 15b, 15c, 15d, 15e, 16a, 16b, 16c, 16d and 16e as shown on plat Filed in **Plat Book 227, Page 151**; Lots 17a, 17b, 17c, 17d, 17e 18a, 18b, 18c, 18d, and 18e as shown on plat Filed in **Plat Book 223, Page 177**; and Lots 19a, 19b, 19c, 19d, 20a, 20b, 20c, 20d, 21a, 21b, 21c, and 21d, as shown on Plat Filed in **Book 230, Page 89**.
- z. **Lot** – Lot or Lots shall mean the separately numbered townhome lots in the Neighborhood depicted on the Map. All Lots referred to by number herein (e.g. “Lots 15a, 15b...”) are references to the specific Lots as numbered for identification purposes on the Map. The term “Lot” includes any Townhome and other Improvements constructed thereon.
- aa. **Map** – Map shall mean the: (i) plat captioned “The Springs of North Asheville Subdivision” Filed in **Book 223, Page 177**; (ii) plat captioned “The Springs of North Asheville Planned Community - Phase 1” Filed at **Plat Book 227, Page 151**; (iii) plat also captioned “The Springs of North Asheville Planned Community - Phase 1” Filed at **Plat Book 230, Pages 89 through 94**; (iv) any subsequent Filed plats of the real property described in Article II, Section 1; (v) any Filed plats of Additional Property subjected to this Declaration; and (vi) any revision of such Filed plat or plats.
- bb. **Master Declaration** – that “Declaration of Terms, Conditions, Restrictions and Protective Covenants for the Springs Subdivision” Filed at **Book 6082, Page 601**, as further amended from time to time. The Neighborhood is “Phase I” as defined in the Master Declaration.
- cc. **Master Association** – the **Springs Property Owners Association, Inc.**, a North Carolina nonprofit corporation which is the “homeowners association” for the entire Master Project under authority of the Master Declaration.
- dd. **Master Plat** – the record plat captioned “Final Subdivision Plat, Current Owner: Stars and Stripes 2C, LLC” Filed in **Plat Book 218, Page 167**, as amended from time to time. The Neighborhood is depicted on the Master Plat as “Tract I.”
- ee. **Master Project** – the approximately 31.95 acres subjected to the Master Declaration. The Master Project includes the Neighborhood and other real estate not owned by Declarant.

- ff. **Member** - shall have the meaning explained in Article V, Section 1.
- gg. **Monument** – Monument shall mean and refer to any Entrance Monument and any general monument, entrance sign, column, general identification or decorative monument, together with any lighting, irrigation system, landscaping and other Improvements which may be constructed as an entryway, “marker” or recurring decoration for the Neighborhood.
- hh. **Mortgage** - Mortgage means any Filed deed of trust, mortgage or other perfected voluntary encumbrance of a Lot. “**First Mortgage**” means any recorded Mortgage having first priority seniority over other Mortgages on a Lot.
- ii. **Mortgagee** – means any beneficiary, payee or holder of any Mortgage. “**First Mortgagee**” means any beneficiary, payee of holder of a First Mortgage.
- jj. **Neighborhood** – All that real estate described in Article II, Section 1, plus such other real estate which may be additionally made subject to this Declaration as provided in Article II, Section 3.
- kk. **Neighborhood Association** - “**Springs Towns HOA, Inc.,**” a North Carolina not-for-profit corporation formed by Declarant by Articles of Incorporation filed on January 21, 2022. The North Carolina Secretary of State ID # for the Neighborhood Association is 2341174.
- ll. **Neighborhood Common Elements** shall mean with respect to any portion of the Neighborhood: [i] all property specifically and expressly declared to be Neighborhood Common Elements by Declarant provided such property primarily or exclusively serves the Neighborhood and not the entire Master Project, [ii] the entire BMP System, notwithstanding that portions of said system may be located within Lots, Public Streets, or Common Elements otherwise maintained by the Master Association or outside the Neighborhood; [iii] Monuments within and solely for the benefit of, the Neighborhood (e.g. any Entrance Monument); [iv] such property as may, from time to time, be owned in fee simple by the Neighborhood Association for the common use and benefit of all or some Owners; [v] landscaping maintained solely by the Neighborhood Association if any; [vi] any other property specifically designated as “Neighborhood Common Elements” on the Map, in this Declaration, or any deed from the Declarant.
 - i. Identified Neighborhood Common Elements shall have that status notwithstanding that they have not yet been conveyed by Declarant to the Neighborhood Association. Except as otherwise provided by this Declaration, Neighborhood Common Elements shall be generally maintained by the Neighborhood Association (but subject to the rights of the Declarant as provided for in this Declaration) for the common use, benefit and enjoyment of the Owners, or of only certain Owners to the exclusion of other Owners as designated in this Declaration. The Declarant reserves the right, but not the obligation, to provide additional Neighborhood Common Elements within the Neighborhood.
 - ii. Amenities, streets, plantings, and the like which may be illustrated upon marketing materials which hypothetically project the appearance of the Neighborhood at a future stage of development do not constitute the commitment of Declarant to build such amenities, or dedicate them as Neighborhood Common Elements. The term Neighborhood Common Elements may include real estate property interests which are less than fee simple (e.g. easements, leases, or licenses). Common elements or common facilities for the benefit of the entire Master Project are not Neighborhood Common Elements.
 - iii. Certain features in the Neighborhood, including streets, alleyways, street lighting and open areas may constitute common facilities for the entire Master Project and not Neighborhood Common Elements. Such features will be maintained by the Master Association and not the Neighborhood Association.
- mm. **Notice** – except in circumstances where this Declaration or the Bylaws specifically provide for a different procedure or time period, “Notice” of the contents of a writing shall be deemed delivered and given to any Owner: (i) five (5) calendar days after being sent by United States mail to the mailing

address of the inhabited residence on that Owner's Lot, or to an alternate mailing address designated in writing by the Owner; (ii) one (1) business day after being sent by national overnight courier service such as Federal Express or UPS for next business day delivery; (iii) the next calendar day after being delivered to an Occupant on the Owner's Lot other than the Owner; or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the Owner; or (iv) immediately upon hand delivery to the Owner.

- nn. **O&M Agreement** - that Declaration of Operations and Maintenance Agreement Related to Stormwater Management by and between the Declarant and the County Filed in **Book 6214, Page 140**, as it may be amended or modified. The O&M Agreement concerns ongoing maintenance of the BMP System.
- oo. **Occupant** - 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.
- pp. **Owner** - Any person or entity other than Declarant who holds the fee simple title to any Lot individually or as a co-owner. The Declarant is not deemed an "Owner." A Builder is an Owner.
- qq. **Period of Declarant Control** - The time period during which the Declarant holds the exclusive authority to appoint and remove members of the Board of Directors and Officers, commencing on the recording of this Declaration and ending on the first to occur of the following events: (a) Twenty years from the first recording date of this Declaration; or (b) the date that the Declarant no longer owns any property within the Neighborhood.
- rr. **Planned Community Act** - The North Carolina Planned Community Act, North Carolina General Statutes Chapter 47F, as amended hereafter, and any successor Statute that is enacted to amend or replace Chapter 47F.
- ss. **Political Sign** - means a sign that attempts to influence the outcome of an election, including supporting or opposing any candidate or issue on an public election ballot.
- tt. **"Private Road"** shall mean the road base and improvements within any road, street, or alleyway shown on the Map, and any other streets, roads or alleys constructed by Declarant within the Neighborhood 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.
- uu. **Rules** - such rules and regulations as the Neighborhood Association may adopt from time to time to insure the safety and comfortable enjoyment of the Neighborhood by the Owners, and the preservation of the Common Elements. Rules may change from time to time. When Notice of a violation of the Rules is given to an Owner with regard to that Owner's actions (or the actions of anyone using the Common Elements as a guest, invitee, or agent of the Owner) each subsequent occurrence or day of non-compliance may be deemed a separate violation or infraction.
- vv. **Storm Water Facility** - a stormwater management facility, which may include detention ponds, underground storm water storage facilities, culverts, drop inlets, swales and other landscaping or Improvements to direct, channel, divert, transmit, spread, collect or otherwise manage intermittent surface water. The term does not include temporary erosion control fences and like measures. The Storm Water Facility specifically includes the BMP System. Any Storm Water Facilities may be relocated or otherwise modified in the future.
- ww. **Tenant** means any Person who is physically present in or is entitled to occupy a Unit in exchange for consideration. Tenants shall not be Members of the Neighborhood Association, but shall, through the Owner, be entitled to certain rights and undertake certain obligations with respect to the Unit.
- xx. **Townhome** - means a Dwelling that is connected by one or more Party Walls to one or more other Dwellings.

yy. **Utilities** - Those lines and services in the nature of electric, telephone, catv or other network fiber or cable, water, sewer and natural gas which may be laid or distributed throughout the Neighborhood.

ARTICLE II

Neighborhood

Section 1. Description. The real property initially subjected to this Declaration is all of the approximately 19.61 acres identified as “Tract I” on the Master Plat, being the same property conveyed to the Declarant by Special Warranty Deed Filed at **Book 6088, Page 1067**. Said Tract I has been further subdivided as shown on the Map. At the time of Filing of this Declaration, the Initial Builder owns the Initial Builder Lots, and Declarant owns all other portions of the Neighborhood.

Section 2. Neighborhood Name. The Neighborhood, the homes constructed therein and the amenities and infrastructure of the Neighborhood shall henceforth, collectively, be known as “**Phase I of The Springs of North Asheville.**”

Section 3. Additions. At any time hereafter, Declarant may add additional real estate to the Neighborhood, which additional real estate shall be subject to this Declaration upon the Filing of amended or supplementary declarations. Upon the Filing of such amended or supplementary declaration, the real estate added to the Neighborhood shall be subject to the burdens and entitled to the benefit of this Declaration and all terms of any supplementary or amended declarations.

Section 4. Form of Amendment. Each amendment or supplementary declaration as referred to immediately above shall contain the following provisions:

- (a) Reference to this Declaration and the date, book and page of its Filing;
- (b) A precise legal description of the additional real estate (if any);
- (c) Language subjecting the additional real estate (if any) to this Declaration and its subsequent amendments or supplementary declarations; and
- (d) Such other covenants, restrictions or easements as Declarant shall, in its discretion, additionally impose upon the subject real estate.

Section 5. Adjacent Property Not Specifically Described. From time to time, Declarant, its predecessors or successors, may hold title or other interests in real estate adjacent to the Neighborhood. Unless such adjacent property is specifically described or included in Article II, Section 1 or the legal description of future supplementary or amended declarations, such adjacent real estate shall not be deemed a part of the Neighborhood.

Section 6. Applicability of Planned Community Act. Even in the event the Neighborhood may contain less than 20 Lots, the Planned Community Act shall apply to the Neighborhood.

ARTICLE III Declaration

Section 1. This Declaration. This Neighborhood Declaration is intended to address matters of unique applicability to the Neighborhood. The Neighborhood shall hereafter be held, sold, leased, transferred, conveyed and encumbered subject to the herein contained covenants, conditions, restrictions, reservations, and easements which: (1) are made for the direct, mutual and reciprocal benefit of each and every portion of the Neighborhood and shall create mutual, equitable servitudes upon each part of the Neighborhood in favor of every other part of the Neighborhood; (2) create reciprocal rights and obligations between the respective Owners and privity of estate between all grantees of portions of the Neighborhood, their successors and assigns; (3) shall operate as covenants running with the land; and (4) shall inure to the benefit of Declarant and each Owner. By acceptance of any deed conveying title to a portion of the Neighborhood, execution of a contract of purchase or acceptance of a lease or license concerning any portion of the Neighborhood or by taking possession of any portion of the Neighborhood; whether from Declarant or a subsequent owner or lessee, any future Owner, lessee, licensee or Occupant shall accept such deed, contract, lease, license or possession upon and subject to each and all of the covenants, conditions, restrictions, reservations and easements set forth herein. Each person or entity who hereafter owns or acquires any right, title or interest in or to any portion of the Neighborhood shall be conclusively deemed to have consented and agreed to the covenants, conditions, restrictions, reservations and easements set forth herein, and in all future supplementary or amended Declarations, whether or not any reference thereto is contained in the instrument by which such person or entity acquires an interest in the Neighborhood.

Section 2. Master Declaration. All portions of the Neighborhood are subject to the Master Declaration and all Owners and Occupants shall own and occupy their Lots and conduct their activities upon the Common Elements in compliance with the Master Declaration. The Master Declaration provides for creation of the Master Association that will maintain Common Elements of the Master Project, imposes restrictions, easements, and other provisions the benefits and burdens of which are binding upon the entire Master Project, including the Neighborhood. When any restriction or standard is addressed by both the Master Declaration and this Declaration, the most restrictive or specific of the restrictions or standards shall be applicable. All Owners will be subject to Assessments from the Neighborhood Association as well as the Master Association. The Master Declaration will control with regard to: (i) most Townhome specific matters such as townhome maintenance, insurance, party-wall issues and the like; (ii) architectural review and control; and (iii) maintenance of any streets and alleyways that have not been accepted for public maintenance.

ARTICLE IV Neighborhood Common Elements

Section 1. Ownership of Common Elements. Declarant shall, not later than one year after the date when Declarant no longer owns any Lot: (i) convey to the Neighborhood Association by Special Warranty Deed those Neighborhood Common Elements which are to be owned in fee simple by the Neighborhood Association; and (ii) convey to the Master Association (as provided in the Master Declaration) those Common Elements which are not Neighborhood Common Elements and which are to be owned by the Master Association.

Section 2. Owner's Rights to Use and Enjoy Common Elements. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Elements, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

- (a) The Neighborhood Association shall have the right to promulgate and enforce reasonable Rules to insure the safety and reasonable availability of the right of the Owners to use the Common Elements, and that such use does not create an unreasonable nuisance to other Owners or Occupants in the Neighborhood.

- (b) The Neighborhood Association shall have the right to suspend the rights of an Owner to vote in the Neighborhood Association and to use certain Neighborhood Common Elements (excluding any Common Elements which are critical for the safe and practical occupancy of a Lot) for any period during which any Assessment against the Owner's Lot remains unpaid, and for a period not to exceed thirty (30) days for any material infraction of its published Rules. The suspension may take effect five (5) days after delivery of a written Notice to the Owner describing the infraction or outstanding balance;
- (c) The Declarant or the Neighborhood Association, as applicable, shall have the right to grant utility, drainage and other easements across the Common Elements they may own;
- (d) Each of the Declarant and the Neighborhood Association shall have a nonexclusive right and easement of enjoyment in and to all Common Elements for the purposes of performing its obligations as provided in this Declaration.

Section 3. Delegation of Use. Any Owner or Occupant may delegate, subject to the Rules, their right of enjoyment of Common Elements to the members of their family, occasional guests, and invitees.

Section 4. Prohibited Activities. Common Open Space within the Neighborhood shall not be used for off-road motorized vehicles including without limitation golf carts, motorcycles, "four-wheelers," ATV's, or the like. Vehicles without reasonable muffler systems are prohibited within the Neighborhood. Vehicles with metal tracks or more than six (6) wheels (except for emergency service vehicles, delivery trucks, and vehicles employed in the construction of the Townhomes or the construction or repair of the Common Elements or Utilities) shall not be permitted on any Private Road.

No hunting or discharge of firearms shall be permitted within the Neighborhood.

Section 5. Acknowledgment Concerning Neighborhood Common Elements. By acceptance of any conveyance of any Lot, each Owner acknowledges that neither the precise acreage and dimensions of the Common Elements, nor the type of amenities or Improvements to be located therein, have been (and may not be) specifically determined until the sale of the last Lot within the Neighborhood. Notwithstanding the lack of specificity relating to the size and development of the Common Elements, each Owner hereby agrees to accept and pay Assessments levied by the Neighborhood Association pursuant to this Declaration. Each Owner agrees to accept such Neighborhood Common Elements as may be designated and/or conveyed by the Declarant, provided that said Neighborhood Common Elements must be located within the bounds of the Neighborhood.

Declarant may have formulated a general plan of development and use for the Neighborhood which may have previously been submitted to and reviewed by some or all of the Owners in the form of maps or other design information. Notwithstanding anything to the contrary, said maps or design information will not necessarily conform to the ultimate development of the Neighborhood.

Except for any areas which Applicable Laws require be conveyed to the City, County, or other governmental agency, the Neighborhood Common Elements shall be conveyed to the Neighborhood Association subject to this Declaration, and applicable drainage, utility and other easements, restrictions, reservations, conditions, and matters of record, zoning, land use regulations, matters of survey and the lien of real property taxes not yet due and payable. The Neighborhood Association shall accept all Neighborhood Common Elements deeded to it and/or dedicated to it on the Map, including any Improvements installed thereon by Declarant. Except as provided otherwise by this Declaration, the Neighborhood Association shall be responsible for the maintenance of all Neighborhood Common Elements (even if not then owned by the Neighborhood Association) in a continuous and satisfactory manner provided, however, Declarant, in its sole discretion may elect, but shall not be obligated, to maintain any portion of the Neighborhood Common Elements in such

manner as Declarant deems appropriate prior to its conveyance of such Neighborhood Common Elements to the Neighborhood Association.

Subject to the provisions of the Planned Community Act, upon the conveyance or transfer of Neighborhood Common Elements to the Neighborhood Association, the Neighborhood Association shall be deemed to have assumed and agreed to pay all continuing obligations including utility charges, similar contracts relating to the ownership, maintenance and operation of the Neighborhood Common Elements. The Neighborhood Association hereby agrees to indemnify and hold Declarant and the Declarant Parties harmless on account of such obligations.

Portions of the Common Open Space may be left as undisturbed natural areas. The Neighborhood Association shall in all events have the right to add to or modify existing landscaping improvements including the planting of shrubbery and perennial or seasonal ornamentals. The Neighborhood Association may install, operate, repair, and replace as necessary any irrigation system that facilitates maintenance of plantings in the Neighborhood Common Elements.

Section 6. Neighborhood Common Element Operation. After the conveyance of any portion of the Neighborhood Common Elements to the Neighborhood Association, that portion of the Neighborhood Common Elements shall be owned, operated, maintained and administered by the Neighborhood Association for the use and benefit of the Declarant and Owners, in accordance with the Governing Documents. Subject to the Neighborhood Association's right to grant easements, leaseholds and other interests as provided herein, the Neighborhood Association may not convey, transfer or encumber all or any portion of the Neighborhood Common Elements to a third party without (a) the approval of eighty (80%) percent of the total voting interests of the Owners; and (b) the specific written consent of the Declarant so long as Declarant (or any of its affiliates) owns any portion of the Neighborhood or as any obligation hereunder to contribute to funding of the Neighborhood Association or maintenance of Neighborhood Common Elements. Any repair, replacement, reconstruction, or nonstandard maintenance of any portion of the Neighborhood Common Elements necessitated by the negligent or willful acts of an Owner, or its Tenants, Occupants, contractors, agents or other party utilizing the Neighborhood Common Elements, through or under such Owner, shall be borne solely by that Owner and that Owner's Lot shall be subject to an Individual Assessment for the expense.

Section 7. No Partition. Unless expressly permitted in this Declaration, there shall be no judicial or other partition of any of the Neighborhood Common Elements.

Section 8. Damage or Destruction. In the event that any Improvements located on any Neighborhood Common Elements shall be damaged or destroyed on account of the occurrence of any casualty, the Board shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Neighborhood Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of the casualty, by at least eighty percent (80%) of the Owners Class Votes, and by Declarant, not to so repair or reconstruct such damage. In the event that it shall be decided not to repair or reconstruct some or all of the damage or destruction, the proceeds of any insurance as may become payable to the Neighborhood Association as a result of the damage or destruction shall be retained by and for the benefit of the Neighborhood Association and placed in any reserve maintained by the Neighborhood Association for future capital improvements. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may but is not required to, levy a Special Assessment to cover the shortfall and no vote of Members shall be required. Notwithstanding the foregoing, the Neighborhood Association shall in all events make all repairs to the BMP System required to comply with its repair obligations pursuant to the O&M Agreement and Waterstone Place Agreement, and such repairs shall not be subject to any vote or requirement of approval by the Owners or Declarant.

ARTICLE V
Neighborhood Property Owner's Association

Section 1. Membership. The Declarant and every Owner shall be a Member of the Neighborhood Association. Membership is appurtenant to the ownership of each Lot and is only available to Declarant and Owners. Membership shall be extinguished upon the complete transfer of all real property in the Neighborhood held by any Member. Members have a duty to keep the Neighborhood Association informed of their current mailing address, electronic address and emergency phone numbers at all times.

Section 2. Classes of Membership.

- (a) **Owners Class Membership.** The Owners Class Members shall consist of all Owners - the definition of "Owner" does not include the Declarant.
- (b) **Founders Class Membership.** The Declarant, or its assignee, shall be the sole Founders Class Member. The Founders Class Membership shall terminate at such time as Declarant has conveyed all of its interest in the Neighborhood (including any Additional Property). Termination of the Founders Class Membership does not terminate the Period of Declarant Control. If at any time the Founders Class Membership has terminated because Declarant owns no portion of the Neighborhood, but Declarant later acquires ownership of one or more Lots, annexes Additional Property into the Neighborhood, or otherwise again becomes the owner of a portion of the Neighborhood, the Founders Class Membership shall be reinstated until such time as Declarant again owns no portion of the Neighborhood.

Section 3. Duties. The Neighborhood Association shall have authority to promulgate Rules concerning use of the Common Elements and public conduct within the Neighborhood (e.g. control of pets, hours for limited noise, use of the Common Elements including the Private Roads and the like). The Neighborhood Association will maintain in its files up-to-date copies of its organizational documents, the Declaration, the Rules, financial records, records of the current ownership of the Lots, mailing addresses for the Owners, and such other documentation and records as are necessary for its management and oversight functions or as required by the Planned Community Act. All documentation maintained by the Neighborhood Association shall be available to the Owners for inspection during Neighborhood Association business hours upon reasonable notice. The Neighborhood Association may employ an individual or business entity to act as managing agent. The Board of Directors shall determine the length of engagement and the compensation to be paid to such managing agent.

The Neighborhood Common Elements shall be maintained by the Neighborhood Association, except that Declarant reserves the right, at Declarant's discretion, to repair or maintain any portion of the Neighborhood Common Elements which Declarant, in good faith, determines is not maintained to the Neighborhood Wide Standard and shall be reimbursed for such maintenance by the Neighborhood Association.

Maintenance of Neighborhood Common Elements, which shall be the duty of the Neighborhood Association, includes (by way of example) the following:

- (a) all costs of maintaining the BMP System and performing all duties required under the O&M Agreement, BMP Access and Maintenance Easement, the Waterstone Place Agreement, and as required by good maintenance practices in general, specifically including: (i) mowing the areas surrounding any open sedimentation or discharge areas; (ii) inspecting, repairing, and replacing culverts, inlets, baffles, filtration systems, and discharge areas; (iii) maintaining or replacing vegetation; and (iv) removing silt, sediment or any controlled substances that may accumulate over time including during periods of construction in the Neighborhood;

- (b) Maintenance of any Neighborhood Entrance Monument, including irrigation if appropriate, plantings of both permanent and seasonal nature, lighting, mowing, weeding, other landscaping, utility charges for irrigation and lighting, maintenance of signage;
- (c) Maintaining liability insurance with regard to Neighborhood Common Elements to the extent that such are not covered under policies maintained by the Master Association; and
- (d) Maintaining casualty insurance upon appropriate Improvements that it is responsible to maintain, with such companies and in such coverage amounts as the Board of Directors may deem appropriate.

The Neighborhood Association is charged with the duty to establish and maintain adequate reserve funds for periodic repair, reconstruction or replacement of any Neighborhood Common Elements having a limited service life or which may require material expenditures at intervals longer than a Budget year (e.g. the BMP System).

The Neighborhood Association is not required to maintain any Neighborhood Common Elements to the extent that such maintenance is assumed and carried out by any private, governmental or quasi-governmental entity, provided the Neighborhood Association may perform additional maintenance if it determines that additional maintenance services are required to maintain the Neighborhood Wide Standard or would otherwise provide material benefits to the Owners and Occupants of the Neighborhood.

Section 4. Summary of Neighborhood Association Governing Documents.

NEIGHBORHOOD ASSOCIATION GOVERNING DOCUMENTS

Document	Purpose
Master Declaration (Filed in the County Register of Deeds)	creates easements, restrictions, and obligations which are binding upon the entire Master Project of approximately 31.95 acres including the Neighborhood.
this Declaration (Filed in the County Register of Deeds)	creates obligations which are binding upon the Neighborhood Association and all present and future Owners in the Neighborhood.
Any future Supplemental Declarations to this Declaration (Filed in the County Register of Deeds)	may be used to add property to the Neighborhood, create easements and impose additional obligations or restrictions on such property, or modify the Declaration
Architectural Guidelines (Are applicable to the entire Master Project and are developed and maintained by the Architectural Authority appointed pursuant to the Master Declaration)	establishes architectural standards and guidelines for Improvements and landscaping.

Document	Purpose
Articles of Incorporation - Neighborhood Association (filed with the NC Secretary of State)	charters the Neighborhood Association as a North Carolina non-profit corporation.
Articles of Incorporation - Master Association (filed with the NC Secretary of State)	charters the Master Association as a North Carolina non-profit corporation.
By-Laws - Neighborhood Association (are adopted by the Board of Directors of the Neighborhood Association)	provides rules for conducting the Neighborhood Association's internal affairs, such as voting, elections, meetings, and the like
By-Laws - Master Association (are adopted by the Board of Directors of the Master Association)	provides rules for conducting the Master Association's internal affairs, such as voting, elections, meetings, and the like
Rules (the Board of Directors of the Neighborhood Association adopt)	provides rules for use of Neighborhood Common Elements and public conduct within the Neighborhood
Board Resolutions (the Board of Directors adopt)	may be enacted to establish practices, policies and procedures for internal governance and Neighborhood Association activities

Section 5. Easements for Neighborhood Association Maintenance, Emergency, and Enforcement.

Easements are hereby imposed for the benefit of the Neighborhood Association over all of the Neighborhood (including the Lots and any streets which are accepted for public maintenance) for all actions reasonably necessary for the Neighborhood Association to fulfill its maintenance responsibilities and carry out any other provision of this Declaration including maintenance, repair and replacement of Stormwater Facilities located within any portion of the Neighborhood not owned in fee simple by the Neighborhood Association. The Neighborhood Association also shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons; the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties, may exercise such right of entry. Except in an emergency situation, physical entry shall only be during reasonable hours following Notice to the Owner.

Section 6. Other Insurance to be Maintained by the Neighborhood Association. In addition to carrying the liability and casualty insurance required by other provisions of this Declaration, the following provisions shall be applicable to the Neighborhood Association:

- (a) The Neighborhood Association may, but is not required to, maintain fidelity coverage against dishonest acts by the Neighborhood Association's officers, employees and others

who are responsible for handling funds of the Neighborhood Association. Any such fidelity coverage shall name the Neighborhood Association as an obligee, shall be written in such amount as the Board shall deem appropriate, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of “employee” or similar term.

- (b) The Neighborhood Association may, but is not required to, maintain directors and officers liability insurance if reasonably available.
- (c) The Neighborhood Association shall maintain workers compensation with respect to its employees, if any, as required by law.
- (d) The Neighborhood Association may obtain insurance against such other risks as the Board shall deem appropriate.
- (e) Premiums for all insurance policies purchased by the Neighborhood Association under this Article shall be assessed against the Lots and shall be included in the Neighborhood Association’s Budget and Annual Assessments for Lots. Deductibles incurred by the Neighborhood Association will be accounted for in the Neighborhood Association’s Budget and Assessments.
- (f) The proceeds of casualty insurance carried by the Neighborhood Association shall be paid to and held by the Neighborhood Association as trustee for the Declarant and/or the affected Owners and Mortgagees, for disbursement in accordance with the provisions of this Declaration.

Section 7. Storm Water Drainage. No Owner shall install or permit any ground alteration or structure on their Lot which may damage or interfere with the use, maintenance, repair or replacement of any Storm Water Facility except to the extent such alteration in drainage pattern is approved in writing by the Neighborhood Association, Declarant, and all public (or quasi-public) authorities having jurisdiction. Declarant may from time to time File instruments showing the approximate locations of surface and subsurface Storm Water Facilities. If for any reason any such instrument is not accepted for Filing, Declarant may deliver such instrument to the Neighborhood Association, and the Neighborhood Association shall maintain such instrument as part of its permanent records available for review by any Owner. In either event, every Owner shall be deemed to have notice of the location of such Storm Water Facilities as may be shown in such instrument.

ARTICLE VI Voting

Section 1. Owners Class. The Owners of each Lot shall be entitled to one (1) vote for that Lot. The vote for any one Lot owned by more than one person or entity shall be exercised as they among themselves shall determine, but in no event shall the vote or votes with respect to any jointly owned Lot be split or cast separately. Notwithstanding the foregoing, unless otherwise provided by the Planned Community Act, the Owners Class Membership shall be non-voting until such time as Declarant owns no portion of the Neighborhood.

Section 2. Founders Class. The Declarant, which is the sole Founders Class Member, shall be entitled to ten (10) votes for each Lot owned by the Declarant, and one (1) vote for each Lot which is then owned by an Owner.

Section 3. Period of Declarant Control. During the Period of Declarant Control the Declarant shall have the exclusive authority to designate, appoint and remove all members of the Board of Directors and all officers

of the Neighborhood Association. To the fullest extent permitted by the Planned Community Act, no Director or officer appointed by the Declarant shall be removed by the Owners or Board of Directors.

Section 4. Litigation, Super Majority Voting Required. Certain actions by the Neighborhood 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 this Neighborhood Association without the strong approval of the Members and notwithstanding anything to the contrary otherwise stated in this Declaration or the Bylaws of the Neighborhood Association, without the affirmative approval of at least seventy five percent (75%) of all votes (not 75% of a mere quorum) allocated to all of the Lots (both Founders Class and Owners Class) the Neighborhood Association shall have no authority to:

- (a) assert any claim against, seek an injunction or other equitable remedy against, or sue the Declarant, any Declarant Party, or any Builder;
- (b) require any Owner to remove any Improvement (or fine such Owner for the past or continuing existence of the Improvement) which has been substantially completed for more than two years, during which time no Notice has been given by the Neighborhood Association that the Improvement is in violation of this Declaration (and such Improvement shall not be subject to fines or penalties); or
- (c) assert a claim for damages against any Owner in an amount in excess of Twenty Five Thousand Dollars (\$25,000).

ARTICLE VII Assessments

Section 1. Creation of Lien and Personal Obligation of Assessments. Each Owner shall, by acceptance of a conveyance of a Lot, whether or not it is so expressed in any conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration specifically including the duty to pay to the Neighborhood Association those Assessments and charges as herein provided. The Assessments and charges, together with such interest thereon and costs of collection as are herein provided, shall be a charge and continuing lien upon the Lot against which assessment is made as of the effective date of said Assessment. Each Assessment, together with interest thereon and any costs of collection, shall also be the personal obligation of the person or entity who was Owner of such Lot when the Assessment was made. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of any Assessment.

Section 2. Purpose of Annual Assessments. Annual Assessments may be levied by the Neighborhood Association for all purposes permitted by this Declaration or the Planned Community Act, including improvement, maintenance, operation, repair, replacement of and additions to the BMP System and any other Neighborhood Common Elements, including but not limited to: [i] the payment of ad valorem taxes and insurance premiums, [ii] payment of utility charges related thereto including electricity for neighborhood lighting, [iii] maintaining, operating and improving, (but not initial construction) of any Declarant installed Neighborhood Common Elements, [iv] employing a management company to facilitate operations of the Neighborhood Association, a security service, maintenance personnel, or other labor, [v] equipment, materials, and the management and supervision thereof, and [vi] any expenditure that would be deemed a "Common Expense" for the Neighborhood under the Planned Community Act. Declarant may employ a related entity or entities to manage the maintenance, operation and repair of the Neighborhood Common Elements. In addition, the Neighborhood Association may use Annual Assessments for the purpose of doing any other things necessary or desirable, in the discretion of the Neighborhood Association, to keep Neighborhood Common Elements in neat and good order, to provide for the health, welfare and safety of the Owners and Occupants of the Neighborhood (including payment of fees to a management company to assist in the affairs of the Neighborhood Association), to advance or maintain the general appearance and function of the Neighborhood consistent with the Neighborhood Wide Standard, and to carry out the goals described

in the preliminary statement of this Declaration. The cumulative Annual Assessments shall be based on the Budgets approved by the Board of Directors and ratified in accordance with the Bylaws.

Without limiting the general statements set forth in the immediately preceding paragraph, Annual Assessments shall specifically be used as follows:

- (a) to carry out the Neighborhood Association's duty to repair, maintain, reconstruct (when necessary), clean and keep the BMP System free from debris and in good operating condition;
- (b) to pay all operating costs associated with the BMP System and any other Neighborhood Common Elements, including but not limited to, utility costs;
- (c) to pay all ad valorem taxes levied against the Neighborhood Common Elements;
- (d) to pay the premiums on all insurance carried by the Neighborhood Association pursuant hereto, the Bylaws or the Planned Community Act;
- (e) to pay all management, legal, accounting, and other professional fees incurred by the Neighborhood Association in carrying out its duties as set forth herein or in the Bylaws;
- (f) to maintain contingency reserves as to the amounts described in subsections (a) through (e) above, and any other purpose set forth in this Article VII, Section 2, in amounts determined by the Board of Directors;
- (g) to maintain a website or other electronic resources for the use and benefit of the Neighborhood at such time as the Board of Directors shall elect; and
- (h) to pay any fees due from the Neighborhood Association to the Master Association to comply with the requirements of the Master Declaration.

All funds maintained in a contingency reserve for a specified purpose (e.g. periodic repairs to the BMP System or other components of the Storm Water Facility) shall be held for that purpose and not be expended for any other purpose without the written approval of a majority of all votes of the Members in the Neighborhood 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 (a "**Reserve Excess**"), in which case the Board may allocate such Reserve Excess to any other reserve fund maintained by the Neighborhood Association without such written approval. Any reserve stated in a Budget shall be funded only to the extent that funds are available from Assessments levied against Owners other than a Builder. Neither Declarant nor any Builder shall be responsible for funding reserves maintained by the Neighborhood Association.

Section 3. Initial Annual Assessment. The initial Annual Assessment shall be based on the Budget prepared by the Neighborhood Association and duly ratified pursuant to the Bylaws, with fractions of the calendar year to be computed and prorated equitably. The Neighborhood Association shall have authority, in its sole discretion, to collect Annual Assessments in semi-annual or monthly installments.

Section 4. Special Assessments. In addition to the Annual Assessments hereinabove authorized, the Neighborhood Association may levy Special Assessments ("**Special Assessments**") for the purpose of defraying, in whole or in part: (i) the cost of any reconstruction, unexpected repair or replacement of the Neighborhood Common Elements; (ii) the cost of legal defense of the Neighborhood Association or its agents (specifically including any management company); or (iii) any lawful purpose permitted under the Planned Community Act. After the end of the Period of Declarant Control, Special Assessments may only be assessed:

(i) upon approval in writing by sixty-six percent (66%) of the Votes of the Members, or (ii) approval by 66% of the Votes of those Members in attendance at a duly called Member's Meeting.

Section 5. Individual Assessment. In the event that maintenance, repair or replacement of any Neighborhood Common Element or other improvement for which the Neighborhood Association has an obligation for maintenance, repair or replacement, is caused due to the willful or negligent act of an Owner, his family, pets, Tenant or invitees, then Notice shall be given to the Owner that they are responsible for the costs of such maintenance, repair or replacement (to the extent such maintenance, repair or replacement is not due to a merely negligent act which is compensated by the Neighborhood Association's insurance). If the maintenance, repair or replacement is not directly and fully completed by agents of the Owner to the satisfaction of the Board of Directors, the Board may have the maintenance, repair or replacement performed after obtaining a minimum of two (2) estimates and the costs thereof shall be specifically assessed by the Board of Directors to the responsible Owner as an Individual Assessment. Estimates need not, however, be obtained for work costing less than One Thousand Dollars (\$1,000.00). The Owner receiving Notice of an Individual Assessment shall pay such amount within thirty (30) days thereafter. Any Owner notified of an Individual Assessment shall have the right to a hearing by the Board of Directors to the extent provided by the Planned Community Act from time to time.

Section 6. Surplus Funds. During the Period of Declarant Control, to the fullest extent permitted by the Planned Community Act, the Neighborhood Association shall have no obligation to reimburse any surplus funds to Owners, provided such funds must be retained for future use by the Neighborhood Association.

Section 7. Declarant and Builders Exemption from Assessments. Notwithstanding any term or provision of this Declaration which may be construed to the contrary, the Assessments, charges and liens provided for by this Declaration shall not apply to the Common Elements or any Lot or other property owned by the Declarant, Neighborhood Association, or Master Association, including Assessments accrued on any Lots to which Declarant, the Neighborhood Association, or Master Association obtains title by foreclosure or deed in lieu of foreclosure. Upon transfer of a Lot from the Declarant to a Builder, so long as that Lot is owned by a Builder, it shall be exempt from all Assessments, other than Individual Assessments for a maximum period ending on the 1st day of the 18th calendar month following the acquisition of the Lot by a Builder.

Section 8. Commencement. Annual Assessments upon an individual Lot shall commence upon purchase of that Lot by a party other than a Builder, or pursuant to the immediately preceding Section 7, whichever first occurs.

Section 9. Due Date. Unless otherwise provided herein, Assessments shall be due and payable in full within thirty (30) days after they are billed to an Owner.

Section 10. Effect of Non-Payment of Assessment. If any Assessment is not paid on the date when due, then such Assessment shall be delinquent and shall be subject to a late fee of the maximum amount permitted under the Planned Community Act as revised from time to time (currently the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any unpaid Assessment installment) and, once thirty (30) days past due, interest will accrue thereon at the "prime rate" of interest announced from time to time by The Wall Street Journal, plus eight percent (8%) per annum (such rate to change from time to time as The Wall Street Journal prime rate changes) never to exceed a maximum of eighteen percent (18%) per annum, unless a lesser rate is required under Applicable Law in which event interest will accrue at the maximum required lesser rate. If such Assessment is not paid within thirty (30) days after the due date, then the Neighborhood Association shall provide a written Notice to the Owner detailing the arrearage and all fees and interest claimed due and may thereafter take all steps permitted under the Planned Community Act and Applicable Law to file a claim of lien, and if the assessment remains unpaid for ninety (90) days or more foreclose the lien against the Lot. There shall be added to the amount of such Assessments all reasonable attorneys' fees and costs incurred by the Neighborhood Association in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessments as indicated above. If the Wall Street Journal shall cease to publish its

“prime rate” the Declarant or Neighborhood Association shall designate a comparable replacement index. Nothing in this Section 10 shall prevent the Neighborhood Association from bringing an action at law against the Owner directly or seeking any other remedy at law or equity.

Section 11. Assessment Rate. Annual Assessments and Special Assessments must be fixed at a uniform rate for all nonexempt Lots.

ARTICLE VIII Improvements, Uses and Restrictions

Section 1. Residential Restrictions.

The following activities are prohibited in the Neighborhood:

- (a) Raising, breeding, or keeping of animals, livestock or poultry of any kind, except that dogs, cats, or other usual and common household pets (which are registered, licensed and inoculated as required by law – not to exceed four per household);
- (b) Staking or otherwise leaving an unattended pet in any Common Element;
- (c) Any activity which violates Applicable Laws;
- (d) Institutional uses, including but not limited to day care centers, churches, temples or shrines, rest homes, schools, medical care facilities, lodges, inns, and bed and breakfast operations;
- (e) Any business or trade, except that an Owner or Occupant residing on a Lot may conduct business activities upon that Lot so long as: (i) the existence or operation of the business activity is not obvious by sight, sound, or smell from outside the residence; (ii) the business activity is legal and conforms to all zoning requirements; (iii) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees; (iv) the business activity does not involve any service or delivery business in which more than one vehicle used in such business would be parked overnight on the Lot, or for which any material amount of parts, equipment, supplies, raw materials, components or tools are stored on the Lot and visible from the exterior of the residence and (v) the business activity is consistent with the residential character of the Neighborhood and does not constitute an aesthetic degradation to the Neighborhood or unreasonable disturbance to other Owners and Occupants, a nuisance, or a hazardous or offensive use. Such determination shall be made solely and conclusively by the Neighborhood Association’s Board of Directors. The foregoing shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities provided that such activities are not held more than once in any six-month period. The terms “business” and “trade,” as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of a townhome for single-family residential use as permitted by this Declaration shall not be considered a business or trade within the meaning of this subsection;
- (f) Camping on any unimproved Lot or Common Element; and

- (g) The discharge of any firearm.

Section 2. Signs. Except as expressly authorized in this Declaration, no signs, including Political Signs, may be erected or displayed on any Lot except for the following, which may not exceed 24 inches by 24 inches in size: (a) one sign on the Lot only advertising the Lot for sale or rent; (b) and (b) yard-sale or similar temporary signs which shall be limited to occasional use for not more than forty eight (48) hours, from time to time (not on a recurring basis with short intervals in between).

These restrictions do not apply to any Monument, to temporary entry signs or advertising by Declarant or Builders, or "for sale" signs installed by Declarant, Builders, or their agents prior to the sellout of the Subdivision. Declarant reserves the right to erect and maintain such signs designating streets, Common Elements, and such other signs that will aid in the development of the Subdivision.

Use of unapproved signage shall be a violation of this Declaration and the Declarant or the Association may levy a fine of not more than the greater of (i) One Hundred Dollars (\$100.00); or (ii) the highest amount permitted under the Planned Community Act; per day for such uncured violation, starting at the later of (a) the earliest permissible time under the Planned Community Act; or (b) immediately upon delivery of written Notice to any Owner of the Lot in violation. After a first written Notice is given to an Owner, no additional written Notice shall be necessary before the Declarant or the Association levies a fine for a second or subsequent violation. Because the presence of unapproved signage is an apparent and obvious circumstance, no hearing is required before the imposition of such fine, provided the Declarant or Association maintains in its files photographs of the unapproved signage and written notations of an agent of Declarant or the Association expressing personal observation of the unapproved signage over the period for which the fine is imposed. Such fines shall be enforceable as Individual Assessments and shall constitute a lien upon the Owner's Lot when a claim of lien is filed of record in the office of the Clerk of Superior Court of the County. Owners are strictly responsible for all signage erected by their agents, contractors, subcontractors, suppliers, and any other parties employed directly or indirectly by Owner, or who provide services or materials to the Owners Lot. Declarant or the Association may enter onto a Lot at any time to remove signage that is in violation of this Section 2.

No freestanding flag poles shall be erected on any Common Elements or Lots.

Section 3. Off-Road Parking; Off-Water Boat Storage. No truck or commercial vehicle in excess of one-ton load capacity, any truck of more than three axles, any vehicle under repair, or wrecked or junked motor vehicle shall be regularly parked upon or permitted to remain on any Lot except in a fully enclosed garage. No boat or boat trailer may be regularly left or stored on the Common Elements. Unless garaged, all automobiles, trucks, trailers, campers, motor homes and recreational vehicles must have a current license plate affixed. No automobiles or any other vehicles may be parked on or along the Private Road except for occasional occurrences for social gatherings or service vehicles of contractors performing bona fide services upon a Lot. Any vehicles with commercial markings and any boat or boat trailer kept on a Lot must be garaged.

Section 4. General Repair and Maintenance. Except as provided otherwise herein or in the Master Declaration, it shall be the duty of each Owner to keep and maintain all of their Lot, including those areas within Setbacks, utility easements, and the like. Builder installed landscaping shall not be removed (without functionally similar replacement) or neglected. The Owner shall keep the entire Lot safe, neat, free of hazards and shall comply with all fire, zoning, health, environmental and other requirements as may legally apply to the Lot. Owners shall keep their Lot clear, clean and free of all unsightly scrap, rubbish or other materials at all times, including the construction period.

Section 5. Obstructions. No part of any structure or the lower branches of trees or other vegetation shall be permitted to obstruct the view at street intersections, specifically including any sight triangles identified on the Map. No obstructions shall be placed upon sidewalks or within the Private Roads and the Declarant and/or Association is authorized to remove such obstructions without providing notice to

any interested party. The actual cost of removing such obstructions may be charged to the Owner who, directly or through its Occupants, Tenants or other agents, contractors or invitees, caused or permitted the obstruction as an Individual Assessment.

Section 6. Minor Violations. In the event of the unintentional violation of requirements of this Declaration, the Declarant, during the Period of Declarant Control, shall have the right to, but is not obligated to, waive such violation. Any such waiver shall be in writing and shall not be contrary to any zoning or subdivision ordinance or other Applicable Law or variance or other similar approval that has been received from any appropriate governmental authority.

Section 7. Utility Easements. Declarant hereby reserves easements for the installation and maintenance of utilities (e.g., electrical, sewer, water, gas, telephone, catv, street lights, etc...) and drainage facilities over: (a) all of the areas labeled on the Map as “Utility Easement,” “Drainage Easement,” “Storm Easement,” *or like phrase*; (b) ten feet (10’) along the side and rear of each and every Lot (except within any Townhome building pad); and (c) the front (street facing) fifteen feet (15’) of each and every Lot (except within any Townhome building pad).

Additional easements for drainage, utility, and any other indicated purpose are reserved as more particularly shown and delineated on the Map and in other Filed documents. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the construction, maintenance, and repair of such utilities or which may interfere with drainage or flow of water within drainage easement areas. The Owner of each Lot shall maintain any portion of their Lot lying within an easement area and shall maintain any Improvements located thereon, except those Improvements installed and maintained by a public authority or utility company.

Each Lot and the Neighborhood Common Elements shall be subject to a perpetual easement in favor of the Declarant, the Neighborhood Association, Builders, and any public or private utility company for the installation and maintenance of wires, lines, conduits, attachments, and other facilities or equipment in connection with the transmission of electricity, gas, water, residential sewage, telephone, CATV, fiber optic or other cable, other systems for sending and receiving data and/or other electronic signals, and any other utilities. Such easement rights include the right of employees, agents or contractors engaged by the Declarant, a Builder, the Neighborhood Association, the City or County, or any utility provider, to enter upon said Lot and/or Neighborhood Common Elements from time to time as may be necessary in order to (a) perform installation, repair, or maintenance work or (b) maintain, replace and read any and all utility meters.

Section 8. Monument Easement. Declarant hereby grants, establishes and reserves, for the benefit of Declarant and the Neighborhood Association and their successors and assigns, a non-exclusive perpetual easement (the “**Monument Easement**”) for the purpose of erecting and maintaining entrance monuments, general monuments, signs, lights, markers or other Improvements identifying the Neighborhood over any portion of the Neighborhood identified as “Entrance Monument,” “Sign Easement,” “Monument Easement,” “Landscape Easement,” or similar identifying nomenclature on the Map (**collectively, “Monument Easement Areas”**)]. Declarant or the Neighborhood Association shall have the right to enter any such Monument Easement Areas to construct, inspect, maintain, repair or replace installations therein. The Owners of any Lot subject to a Monument Easement shall not remove, camouflage, damage or otherwise alter in any way said Monuments or related improvements.

Section 9. Easements for certain Storm Water Control Features and Sediment Management. Underground drainage pipes (normally reinforced concrete pipe or galvanized steel pipe), swales, or ditches have been installed by Declarant upon portions of the Lots or Common Elements for stormwater control. A stormwater drainage easement is reserved and imposed upon an area of at least ten feet (10’) (wider if so noted on the Map) centered upon such underground pipe or above ground swale or ditch. Such easement shall run for the benefit of Declarant, the Neighborhood Association and those Owners whose Lots are served by the

drainage easement. Such areas include the BMP and any additional features that may be installed by Declarant whether or not such areas are identified on the Map. The Declarant and the Neighborhood Association shall have a right of access over the Lots and all Neighborhood Common Elements for the purpose of inspecting, maintaining, repairing, and replacing the facilities in all stormwater drainage easement areas.

Declarant hereby imposes an easement in favor of all Lots over all drainage easement and impoundment areas identified on the Map or herein, for the channeling, movement and discharge of surface stormwater.

Declarant or Builder installed ditches, channels, or swales may be mowed, but may not be stripped of vegetation. All activity within the Neighborhood shall be conducted so as to avoid damaging any drainage swales. Any disturbance or damage to the functionality of these drainage features shall be promptly repaired by the Owner causing such disturbance or damage.

Erosion and sediment control measures for work on any Lot must be designed, installed, operated and maintained in accordance with the most recent version of the "North Carolina Sediment and Erosion Control Planning and Design Manual" or any successor manual or guidelines. In all events, during any construction on a Lot, the appropriate sedimentation and erosion control devices must be implemented and maintained to ensure that eroded materials do not clog drainage swales or enter the BMP System.

All areas disturbed by an Owner or Builder shall be properly graded and provided a ground cover sufficient to restrain erosion within ten (10) days after completion of any construction activity on the Lot.

All Lots and Neighborhood Common Elements are hereby subjected to an easement in favor of the Declarant, the Neighborhood Association, and the Builders for slope control purposes, including the right to grade and plant slopes and to prohibit any activity that might: (i) interfere with the slopes; (ii) create erosion or sliding problems; or (iii) change, obstruct or retard surface water drainage flow. All Neighborhood Common Elements are further subjected to a perpetual easement in favor of the Neighborhood Association and all Lots for the general drainage of surface waters over and across such Lot provided such waters are not channeled or directed in a destructive manner.

Section 10. Grading Rights. Until the Neighborhood is completely developed with occupied residences on every Lot (i.e. no Builder retains any unsold Lots and Declarant owns no Lots), Declarant or Builders (with the written approval of Declarant) may make cuts and fills upon any Lot or other portion of the Neighborhood and do such grading, earth moving, and remediation as in its sole reasonable discretion, may be necessary to improve or maintain the Neighborhood.

Section 11. Nuisances. No noxious or offensive trade or activity shall be carried out upon any Lot or the Common Elements, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No material of any kind shall be kept in any part of the Neighborhood that will emit foul or obnoxious odors. Further, no activity shall be conducted on any portion of the Neighborhood that will cause any noise that may disturb the peace and quiet of the Owners or Occupants of the surrounding Townhomes.

All pets must be kept within the confines of an Occupant's Lot except when being held on hand leash by the owner of the animal or the owner's agent. A pet owner shall be responsible for cleaning up after his or her pet, and the Neighborhood Association shall have the right to levy fines and enforce charges against persons who do not clean up after their pets or leave pets unattended in a yard or similar enclosure for an unreasonable period of time. The right of an occupant to maintain an animal upon a Lot shall be subject to termination if an Owner has received three (3) or more Notices of violation from the Neighborhood Association.

Section 12. Owner and Builder Installed Trees. So long as Declarant owns any Lots within the Neighborhood, Owners shall not remove Declarant or Builder installed trees or shrubs (other than replacement of such that have died) without the express written approval of Declarant. Materially damaging a tree or shrub shall be considered “removing” that item.

Section 13. Violations. Any unauthorized use of a Lot must be terminated so as to extinguish any violations of this Declaration. If a violation of this Declaration is found to exist, the Declarant or the Neighborhood Association may deliver written Notice of such violation to the Owner of the Lot in violation and any other responsible parties.

If reasonable measures have not been taken by the Owner or other responsible parties to remedy the violation within ten (10) business days following delivery of Notice, the Declarant or Neighborhood Association may: (i) levy and impose a daily fine upon the Owner or (ii) individually or through agents, employees or contractors, enter onto the applicable Lot and take such measures as may reasonably be necessary to abate the violation. Any fine for an uncured violation levied or imposed pursuant to this Section shall be limited to the greater of: (i) One Hundred Dollars (\$100.00) per day; or (ii) the highest amount permitted under the Planned Community Act or other applicable law or regulation. The fine may be imposed beginning on the eleventh (11th) business day following delivery of the written Notice of violation.

In the event entry is made upon the Lot for the purpose of abatement of a violation, such entry shall not be deemed a trespass and those parties entering on behalf of Declarant or the Neighborhood Association shall have no liability to the Owner or other parties having an interest in the Lot for any entry taken in connection with the abatement of a violation. All costs and expenses, including legal fees, permits, mobilization costs and insurance plus a fifteen percent (15%) allowance for general overhead and intangible costs, shall be a binding obligation of the Owner of the Lot in violation. In addition, all costs shall be a lien upon the Lot, enforceable in the same manner as a lien for an Assessment made upon the Lot.

Section 14. Non-Waiver. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision contained herein or referred to herein shall be held to be a waiver by that party of any right available to the party upon the recurrence or continuance of said violation or the occurrence of a different violation.

ARTICLE IX Environmental Hygiene and Storm Water Control

Section 1. Storage tanks. Underground storage tanks for petroleum products, chemicals, or other substances having the potential to cause damage by accidental release into the soil, are prohibited in the Neighborhood.

Section 2. Storm Water Facilities. Portions of the Lots and Common Elements will be improved with Storm Water Facilities. Each Owner shall be solely responsible for maintenance, repair and replacement of all Storm Water Facilities located on and servicing only their own Lot and the Improvements thereon (e.g. swales, diffusers or piping that directs water from their downspouts or yards to other Storm Water Facilities). With regard to other Storm Water Facilities located on their Lot, all Owners are additionally responsible to: (i) remove limbs, leaves, accumulated grass clippings, and other debris which may impede the flow of surface water; and (ii) inform the Neighborhood Association if accumulated debris is beyond the ability of the Owner to remove. Owners shall not block or take any other action to interfere with the function of any Storm Water Facilities. Declarant shall have the right and authority to abandon, create, and otherwise modify Storm Water Facilities on any portion of the Common Elements and any Lots in its ownership.

ARTICLE X
Duration, Modification and Termination

Section 1. Amendment. The covenants, conditions and restrictions of this Declaration may be amended by the Declarant during the Period of Declarant Control, and at any time thereafter and from time to time by an agreement signed by Owners holding at least 67% of the votes appurtenant to the Lots which are then subject to this Declaration; provided, however, that such amendment must be consented to by Declarant so long as Declarant is the Owner of any property in the Neighborhood including any Additional Property, or is obligated in any way to fund the Neighborhood Association. Any such amendment shall not become effective until the instrument evidencing such change has been Filed.

Notwithstanding anything in this Section 1 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 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.

Section 2. Term. The covenants and restrictions of this Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of fifty (50) years from the date this Declaration is originally Filed; after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Owners holding a majority of the votes appurtenant to the Lots, plus Declarant, if Declarant then owns any of the Neighborhood or is obligated to fund the Neighborhood Association, has been recorded, agreeing to terminate or modify said covenants and restrictions in whole or in part. Provided, however: (i) the residential use restrictions set forth in Article VIII, Section 1, of this Declaration shall run with the land and shall be binding upon all parties and persons claiming under them in perpetuity, and (ii) this Declaration shall not be terminated so long as the Neighborhood Association has continuing obligations under the O & M Agreement.

ARTICLE XI
Enforcement

Any violation of this Declaration, whether in whole or in part, is hereby declared to be a nuisance and, without limitation, any party empowered to enforce this Declaration may avail itself of all remedies available under Applicable Laws for the abatement of a nuisance in addition to all other rights and remedies set forth hereunder or otherwise available at law. This Declaration may be enforced by Declarant and the Neighborhood Association, by proceedings at law or in equity against the person or entity violating or attempting to violate any covenant or restriction, either to restrain the violation thereof, abate or remediate damage caused by the violation, or to recover damages, all together with reasonable attorney's fees and court costs. Further, after the termination of the Period of Declarant Control, in the event the Neighborhood Association fails to act to enforce any covenant or restriction herein, any Owner of any Lot may enforce these covenants and restrictions as aforesaid against any other Owner.

ARTICLE XII
Declarant Retained Rights

Section 1. Assignability of Rights. All rights, powers and reservations of Declarant stated herein may be assigned. If at any time Declarant ceases to exist and has not previously made an assignment of its rights, a successor Declarant may be appointed by the written vote of a majority of the Owners. Any assignment made pursuant to the terms of this Section shall be Filed.

Section 2. Exoneration of Declarant. It is agreed by all Owners and by any other party having an interest in any Lot that Declarant has no duty to enforce any of the covenants and restrictions contained herein. Declarant

shall not be subject to liability to any party by reason of its failure to enforce any covenant, condition or restriction herein.

Section 3. Temporary Construction Easements. Declarant reserves for itself, its agents, and all Builders, the right and easement to, from time to time, go over and upon (including trucks, equipment and the like) any Lot and Common Element for the purpose of installing infrastructure, creating drainage features, or other work necessary in the Neighborhood, whether the work benefits the Lot over which access is made or other Lots. The Declarant or Builder will repair any material damage to the Lot and Common Elements over which access is made and will exercise care to minimize the duration of such work.

Section 4. Reservation of Maintenance Easement Option. Declarant hereby reserves, for the benefit of itself and the Neighborhood Association, a right to perform maintenance (including landscaping and beautification) over and upon any Monument Easement Area and the area within a radius of five (5) feet from the outside edge of any Monument Easement Area. The Declarant and the Neighborhood Association may exercise this right of repair and maintenance either on a continuing basis or from time to time, at their sole discretion. All expenses incurred in such maintenance activities are hereby deemed to be appropriate uses of the Annual Assessments raised by the Neighborhood Association

Declarant reserves an easement of reasonable access over the entire Neighborhood for the benefit of Declarant and the Neighborhood Association, its successors and assigns, for the purposes of constructing, reconstructing, maintaining, repairing and replacing the BMP System.

Section 5. Declarant's Reservation of Development and Special Rights. Declarant hereby reserves unto itself for so long as it either owns any interest in any property in the Neighborhood or the Period of Declarant Control is in effect, the following special declarant rights: (i) to complete any Improvements indicated on the Map; (ii) to exercise all rights and take those actions reasonably necessary to develop the Neighborhood; (iii) to maintain sales offices, management offices, signs throughout the Neighborhood for advertising purposes, and to authorize Builders and others to erect models and promotional signage; (iv) easements through, over and upon the Common Elements for the purpose of making improvements within the Neighborhood; (v) to appoint or remove any officer or Board of Directors member; and (vi) to create temporary storage areas (which may be fenced or otherwise protected) for construction equipment and building supplies at one or more locations within the Neighborhood and to delegate such creation and storage rights to Builders from time to time.

Subject to the requirements of the Planned Community Act, the Declarant at all times during the Period of Declarant Control (and thereafter the Neighborhood Association) shall have the right to grant, convey and relocate easements, licenses or rights of way in, on, over or under the Common Elements for purposes consistent with the terms of this Declaration. No such easements shall be imposed or relocated, however, so as to unreasonably interfere with the use and enjoyment of the Common Elements for their intended purposes.

To the fullest extent permissible, the Declarant reserves all special rights authorized under the Planned Community Act and any successor act or Applicable Laws.

ARTICLE XIII Partial Taking

In the event that any portion of the Neighborhood is taken or purchased in any manner in the nature of a condemnation or other governmental taking, such taking will not render invalid any provision contained in this Declaration.

ARTICLE XIV
General

Section 1. Mortgagees' Protection. Violation of this Declaration shall not defeat the lien of any Mortgage made in good faith and for value upon any portion of the Neighborhood. Any lien created hereunder shall be subordinate to any such Mortgage unless a lis pendens or notice of the lien shall have been Filed prior to the recordation of such Mortgage; provided, however, that any Mortgagee in actual possession or any purchaser at any trustee's, mortgagee's or foreclosure sale shall be bound by and be subject to this Declaration as fully as any other Owner.

Section 2. Obligation of Neighborhood Association to First Mortgagees. So long as any First Mortgagee shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such First Mortgagee, upon timely written request to the Neighborhood Association, shall have the following rights:

- (a) To inspect the books and records of the Neighborhood Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Neighborhood Association;
- (b) To be given notice by the Neighborhood Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration, the Articles of Incorporation, or the Bylaws of the Neighborhood Association or of any proposed abandonment or termination of the Neighborhood Association or the effectuation of any decision to terminate professional management of the Neighborhood Association and assume self-management by the Neighborhood Association;
- (c) To receive notice of any condemnation or casualty loss affecting the Common Elements or any portion thereof;
- (d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Neighborhood Association;
- (e) To be given notice of any delinquency in the payment of any Assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the First Mortgagee, such notice to be given in writing and to be sent to the principal office of such First Mortgagee, or to the place which it may designate in writing.

Section 3. Requirements of First Mortgagee. Whenever any First Mortgagee desires to avail itself of the provisions of this Article, it shall furnish written notice thereof by certified mail, postage prepaid, return receipt requested, to the Neighborhood Association at the Registered Agent's address registered with the Secretary of State identifying the Lot or Lots upon which any such First Mortgagee holds any first lien or identifying any Lot or Lots owned by such First Mortgagee and such notice shall designate the place to which notices, reports or information are to be given by the Neighborhood Association to such First Mortgagee.

Section 4. Subordination. No provisions contained in this Declaration shall defeat or render invalid the lien of any Mortgage which is made in good faith and for value. The lien of the Assessments provided for herein shall be subordinate to the lien of any Mortgage recorded prior to the date any such Assessment becomes due. This subordination shall apply only to Assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. Any mortgagee who acquires title to or comes into possession of a Lot pursuant to exercise of remedies provided for in the mortgage, including foreclosure by judicial action or exercise of a power of sale, and

any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid Assessments or charges against the Lot which have accrued prior to the time such mortgagee or purchaser acquires title to or comes into possession of the Lot; provided, however, this exception shall not be applicable to any claim for Assessments or charges levied by the Neighborhood Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due Assessments upon such Lot; and provided further, that except as otherwise provided in this Section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, Assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Lot shall not relieve a selling Owner from personal liability for any assessments which became due and payable prior to such sale, transfer or conveyance, nor relieve such Lot from a duly recorded lien for any such prior unpaid assessment.

Section 5. Chain of Title. Each grantee, lessee or other person in interest or occupancy accepting a conveyance of a fee or lessor interest, the demise of a leasehold interest, or a license, in any Lot, whether or not the instrument of conveyance refers to this Declaration, covenants for himself, his heirs, successors and assigns to observe and perform and be bound by this Declaration and to incorporate this Declaration by reference in any conveyance, demise of a leasehold estate, or the grant of a license, of all or any portion of his interest in any real property subject hereto.

Section 6. Ambiguities. If any discrepancy, conflict or ambiguity is found to exist with respect to any matters set forth in this Declaration, such ambiguity, conflict or discrepancy shall be resolved and determined by Declarant in its sole discretion. Declarant shall have the right to interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all parties or property benefited or bound by the provisions hereof. Any conflict between any construction or interpretation of Declarant and that of any other person or entity entitled to enforce any of the provisions hereof shall be resolved in favor of the construction or interpretation of Declarant.

Section 7. No Reversionary Interest. This Declaration shall not be construed as creating conditions subsequent, or as creating a possibility of reverter.

Section 8. Zoning Requirements. This Declaration shall not be interpreted as permitting any action or thing prohibited by any applicable rezoning plan or other applicable zoning laws, any other Applicable Laws, or by specific restrictions imposed by any deed or other conveyance. In the event of any conflicts, the most restrictive provision among the conflicting terms shall be taken to govern and control.

Section 9. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court or other body of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Declaration and all remaining restrictions, covenants, reservations, easements and agreements contained herein shall continue in full force and effect.

Section 10. Gender. All pronouns used herein shall be deemed to be singular, plural, masculine, feminine or neuter as application to specific circumstances may require.

Section 11. Liability Limitations. None of Declarant, the Declarant Parties, Owners, or any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Neighborhood Association. The Neighborhood 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.

All Owners acknowledge that they and their invitees will use any Private Roads, walking paths, and all other Common Elements at their own risk and do hereby release and agree to hold harmless and indemnify Declarant and the Neighborhood 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. The Declarant or the Neighborhood Association may, but shall not be obligated to, maintain or support certain activities within the Neighborhood designed to enhance the general levels of safety and security. Neither the Neighborhood Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Neighborhood, nor shall either be held liable for any loss or damage.

No member of the Board of Directors or any officer of the Neighborhood Association shall be personally liable to any Owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever while acting in the capacity of a member of the Board, Officer of the Neighborhood Association, or member of a committee appointed by the Board, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud. The foregoing shall not preclude such Person who also is the Owner of a Lot from being liable for matters in the same manner and to the same extent as Owners of other Lots with respect to matters not related to such Person's actions as a member of the Board, officer of the Neighborhood Association, or member of a committee appointed by the Board

Section 12. Construction Activities. All Owners, Occupants, Tenants and other parties who use the Neighborhood hereby are placed on notice that Declarant, 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 Neighborhood. 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 Neighborhood 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, 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 Neighborhood 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 Neighborhood.

Section 13. Timeshares and Short Term Rentals. No Lot or ownership interest may be subdivided to permit time sharing or other methods of creating interval ownership without the express written Filed consent of the Declarant or Neighborhood Association. 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™, and the like.

Section 14. 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 Neighborhood, without the prior written consent of Declarant or the Neighborhood Association, which consent may be granted or withheld in the sole discretion of Declarant or the Neighborhood Association.

Section 15. Sales Offices; Model Homes. Notwithstanding any other provision of this Declaration, the Declarant, for itself, its successors or assigns and all Builders, shall have the right to maintain sales offices and model homes for sales of Lots and sales or rentals of Townhomes throughout the Neighborhood. Model homes are those homes used for the purpose of inducing the sale or rental of other homes in the Neighborhood.

Section 16. 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.

Section 17. Emergency Escape and Rescue Easement. An Emergency Escape and Rescue Easement is hereby imposed upon all portions of the Common Open Space, any other 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 (the parties named in the preceding (i) and (ii) being collectively referred to herein as the "**Benefited Parties**"). Pursuant to the Emergency Escape and Rescue Easement 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 17 the terms "**Emergency Escape and Rescue Opening**" and "**Public Way**" shall be given the meanings assigned to those terms in Section R310.1 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 the Common Open Space, any open or paved Common Elements that would create a violation of the emergency escape provisions of the Residential Code.

[Remainder of this page intentionally blank – signature pages follow]

IN WITNESS WHEREOF, Declarant has executed this Declaration.

NSR Woodfin, LLC

by: C. Shae Buckner

Name: C Shae Buckner

Title: Manager

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

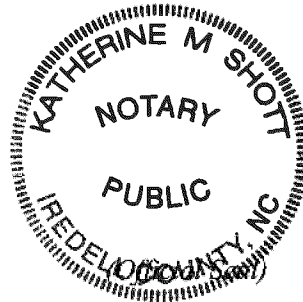
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: C Shae Buckner, as Manager of NSR Woodfin, LLC.

Date: 2/9/2023

Official Signature of Notary

Katherine M Shott

Notary's printed or typed name, Notary Public



My commission expires: 4/29/2023

IN WITNESS WHEREOF, Initial Builder has executed this Declaration.

Madison Simmons Homes & Communities, LLC

by: [Signature]

Name: David Dupree
Title: Manager

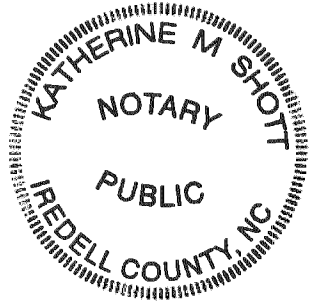
STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

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: David Dupree, as *Manager of Madison Simmons Homes & Communities, LLC*.

Date: 2/9/2023

Official Signature of Notary

[Signature]
Notary's printed or typed name, Notary Public



(Official Seal)

My commission expires: 4/29/2023

IN WITNESS WHEREOF, the Neighborhood Association agrees to, has joined in, and has executed this Declaration.

Springs Towns HOA, Inc.

by: [Signature]

Name: David Dupree
Title: President

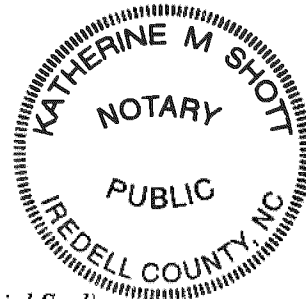
STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

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: David Dupree, as President of Springs Towns HOA, Inc..

Date: February 9 2023

Official Signature of Notary

Katherine M Shott
Notary's printed or typed name, Notary Public



(Official Seal)

My commission expires: 4/29/2023

THIS CONSENT AND SUBORDINATION is made this 16th day of February, 2023, by Pinnacle Bank, a Tennessee banking corporation ("Beneficiary"); the beneficiary named in the: (i) Deed of Trust and Security Agreement, Assignment of Leases and Rents and Assignment of Contracts and Plans (North Carolina) Filed in **Book 6088, at Page 1070**; (ii) "Master Residential Construction Line - Deed of Trust, Security Agreement and Assignment of Leases and Rents and Assignment of Contracts and Plans" Filed in **Book 6184, Page 62**; and (iii) Supplemental Deed of Trust Filed in **Book 6249, Page 1431**; all in the Buncombe County Public Registry (collectively the "**Deeds 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 Neighborhood and any additions to the Neighborhood. The undersigned Beneficiary hereby subordinates the Deeds of Trust to this Declaration (including future amendments and supplementary declarations) so that any foreclosure or other conveyance of the Neighborhood pursuant to one of the Deeds 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 16th day of February, 2023.

BENEFICIARY:

Pinnacle Bank
By: [Signature]
Name: Jim K. Bayman
Title: SVP

STATE OF NC
COUNTY OF Guilford

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: Jim K. Bayman as SVP of Pinnacle Bank

Date: 2/16/2023

Official Signature of Notary
Stephanie P. Blair
Notary's printed or typed name, Notary Public

My commission expires: 3/16/2026

