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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MAGNOLIA COVE SUBDIVISION

This Declaration is made November 4, 2020, by **Magnolia Cove, LLC**, a North Carolina limited liability company referred to as "Declarant." The Declarant states declares as follows:

A. The Declarant is the owner of that tract of land located in Catawba County, North Carolina, and described in **Exhibit A** attached hereto and incorporated herein (the "Property");

B. The Declarant intends to subdivide the Property into residential lots, common areas and public right-of-way, and to create from the Property and such additional land as may be subjected to this Declaration pursuant to Article X below, a planned community to be known as Magnolia Cove (the "Community); and

C. The Declarant desires to impose certain restrictive and protective covenants upon the property to provide voting rights for Members in the Association and assessment allocations for Common Expenses to protect and to promote the beneficial ownership, use and enjoyment of all residential lots located within the Community.

THEREFORE, pursuant to Chapter 47F of the North Carolina General States (the "Planned Community Act"), the Declarant hereby executes this Declaration to create Magnolia Cove, a North Carolina planned community, and declares that henceforth all portions of the Property shall be held and owned subject to the following terms, provisions, covenants, conditions and restrictions, which shall run with the Property and which shall be binding upon all owners of any portion of the Property and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns.

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

ARTICLE ONE

Application of the North Carolina Planned Community Act

The terms and provisions of Chapter 47F of the North Carolina General Statutes, as the same shall be amended from time to time, shall apply to the Community.

ARTICLE TWO

Definitions

The definitions set forth in N.C.G.S. § 47F-1-103 shall apply to this Declaration and are incorporated herein, except that the terms listed below shall have the specific meanings stated:

"Annexation Declaration" shall mean an instrument recorded at the Catawba County Public Registry that subjects additional land to this Declaration.

"Architectural Guidelines" shall mean the architectural, design and construction guidelines and review procedures adopted pursuant to Article V below, as they may be amended.

"Articles of Incorporation" shall mean the Articles of Incorporation for Magnolia Cove Homeowners Association, Inc., a North Carolina nonprofit corporation.

"Association" shall mean Magnolia Cove Homeowners Association, Inc., a North Carolina nonprofit corporation.

"Base Assessment" shall mean the assessment levied on all Lots subject to assessment under ARTICLE EIGHT below to fund Common Expenses, as determined in accordance with ARTICLE EIGHT below.

"Board of Directors" or "Board" shall mean the executive board of the Association, as defined by the Planned Community Act and as created by the Bylaws.

"Bylaws" shall mean the bylaws of the Association as they now or hereafter exist and as they may be amended from time to time.

"Common Areas" shall mean all property, and any improvements thereon, wherever located, owned or leased by or dedicated to the Association or subjected to an easement or license in favor of the Association for the common use and enjoyment of Members. Common Areas shall include all water and sewer lines serving more than one Lot and located outside any public right-of-way or utility easements. Common Areas shall include any Stormwater Control Facilities serving more than one Lot and not accepted by any governmental authority for maintenance. Common Areas shall include any streets or road right-of-way serving more than one Lot and not accepted by any governmental authority for maintenance.

"Common Expenses" shall mean all costs of the Association in maintaining Common Areas, and meeting its responsibilities pursuant to this Declaration.

"Community-Wide Standard" shall mean the standard of conduct, maintenance or other activity general prevailing in Catawba County, North Carolina, or the minimum standards established pursuant to the Architectural Guidelines, Rules and Regulations, and

Board resolutions, whichever is the higher standard. Declarant shall initially establish such standard, which may involve both objective and subjective elements. The Community-Wide Standard shall evolve as the Community evolves.

"Declarant" shall mean Magnolia Cove, LLC, a North Carolina limited liability company, or any successor or assign designated as Declarant in a Recorded Document executed by the immediately preceding Declarant.

"Declarant Control Period" shall mean the period of time during which Declarant holds a fee simple interest or contractual right in any portion, however small, of the land described in **Exhibit "A"** and/or **Exhibit "B"** attached hereto and incorporated herein.

"Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Magnolia Cove, any amendments hereto or restatements hereof.

"Governing Documents" shall mean, collectively, the Declaration, any applicable Supplemental Declaration, the Articles of Incorporation, the Bylaws, the Architectural Guidelines and the Rules and Regulations, as the same may be amended from time to time.

"Lot" shall mean any separate parcel of land within the Community designated for separate ownership or occupancy and residential use.

"Limited Common Areas" shall mean a portion of the Common Areas reserved for the exclusive use of one or more, but less than all, of the Lots.

"Master Plan" shall mean the master land-use plan for the development of the Community approved by Catawba County, North Carolina.

"Member" shall mean and refer to every person or entity entitled to membership in the Association as provided herein.

"Mortgage" shall mean a deed of trust recorded at the Catawba County Public Registry that is a lien against any Lot. "Mortgagee" shall refer to a beneficiary or holder of a Mortgage. A "First Mortgage" shall be a Mortgage having priority over all other Mortgages encumbering a Lot. "First Mortgagee" shall refer to a beneficiary or holder of a First Mortgage.

"Occupant" means any person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such person is a tenant of the Owner of such property. "Occupants" shall refer to more than one Occupant.

"Owner" shall mean and refer to an owner of record of a fee simple interest in any Lot, including contract sellers, but excluding those having an interest only as security for the performance of an obligation. There may be more than one Owner of any single Lot.

"Recorded Document" shall mean any document, including any map or plat of survey, recorded at the Office of the Register of Deeds of Catawba County, North Carolina.

"Rules and Regulations" shall mean the initial rules and regulations for use and occupancy of the Lots and the Common Areas set forth in **Exhibit B**, as they may be supplemented, modified, restated or superseded.

"Special Assessments" shall mean assessments levied in accordance with Article Eight below.

"Specific Assessments" shall mean assessments levied in accordance with Article Eight below.

"Stormwater Control Facilities" shall mean one or more of the following devices and measures, together with associated private drainage easements utilized for conveying stormwater (however identified on a plat, map, or in a recorded document) that serve(s) the Property and which are located outside of public street right-of-way and drainage easements accepted into public use by Catawba County, including but not limited to, bio-cells, conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet ponds, dry detention basins, wetlands, permanently protected undistributed open space areas (and similarly designated areas shown on any recorded plat of any portion of the Property), bio-retention areas, retention or detention ponds, runoff and pollutants for more than one (1) Lot in the Property. Private drainage easements, however identified on a recorded plat or recorded map or in a recorded document, that serve more than one (1) Lot are deemed to be dedicated to the Association for the benefit of the Property or applicable portions thereof.

"Supplemental Declaration" shall mean any declaration of covenants, conditions, and/or restrictions that Declarant may file at the Catawba County Public Registry subsequently to filing this Declaration, which shall only apply to a particular area or areas within the Community. Such Supplemental Declaration may supplement, change, amend or supersede the terms and provisions of this Declaration as necessary or accommodate the difference between the plan of the development of the Property and the plan of development for the rest of the Community.

ARTICLE THREE

Magnolia Cove Homeowners Association, Inc.

Every person or entity who is an owner of a fee simple or undivided fee simple interest in any of the Lots shall be a Member of the Association. Ownership of such interest shall be the sole qualification for membership, and membership shall be appurtenant to, and shall not be separated from such ownership.

The Association shall be organized and governed as follows:

1. Purposes. The purpose of the Association shall be:

a. To maintain and preserve all Common Areas, and all roads, streets, decorative and protective structures (including but not limited to entry monuments and buffer walls), ponds, lakes, utilities, landscaped areas and other improvements located thereon, if any;

b. To enforce the provisions of the Governing Documents;

c. To perform all duties and functions allotted to owner's association pursuant to the Planned Community Act;

d. To promote and to protect the enjoyment and beneficial use and ownership of the Lots; and

e. To promulgate and enforce the Rules and Regulations and administrative rules and regulations for use of the Common Areas.

2. Powers and Responsibilities. The Association shall have all powers and responsibilities and shall perform all duties and functions allotted to owners' associations by Article 3 of the Planned Community Act, the terms and provisions of which are incorporated herein. The Association shall also have all rights and powers and shall perform all duties and functions that may be assigned to it by Declarant pursuant to this Declaration.

3. Voting Rights and Meeting. On matters of Association business submitted to vote of the membership, there shall be two classes of membership.

Class A. Every person who is an Owner, with the exception of the Declarant, shall be a Class A Member. Class A Member shall be entitled to one (1) vote per Lot. No more than one vote per Lot may be cast by Class A Members, regardless of the number of Owners of a given Lot.

Bylaws. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters or issues before or considered by the Association. The Class B Member shall be entitled to three (3) votes for each Lot it owns, plus one (1) vote for each Lot owned by a person other than the Declarant. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events to occur: (i) the date that all the Lots in the Community have been conveyed by the Declarant to other Owners; (ii) the surrender by the Declarant of the right to appoint or remove any officer of the Association or member of the Board by a Recorded Document executed by the Declarant; or (iii) the expiration of the Declarant's rights to appoint or remove any officer of the Association or member of the Board pursuant to Article XI below.

Unless otherwise provided herein or in the Planned Community Act, all voting matters shall be decided by a simple majority vote. The requirements for a quorum shall be as provided by the Bylaws. The Members shall meet as provided by the Bylaws.

4. Bylaws. The initial Board shall enact and adopt all and any Bylaws that they deem necessary for the operation of the Association, which Bylaws shall be binding upon all Members, their Mortgagees, lessees, agents and invitees.

ARTICLE FOUR

Architecture and Landscaping

1. General. No structure or thing, including but not limited to fences, shall be placed, erected or installed upon any Lot and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations or existing improvements, or planting or removal of landscaping) shall take place on any Lot except pursuant to approval and in compliance with this Article and the Architectural Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of a dwelling located on his or her Lot without approval; provided that modifications to the interior of a dwelling visible from outside the structure shall be subject to approval.

Any improvements constructed on a Lot shall be designed by and built in accordance with the plans and specifications of a licensed architect, unless otherwise approved by the Declarant.

2. Architectural Review.

a. By Declarant. Each Owner, by accepting a deed or other instrument conveying any legal or equitable interest in a Lot, acknowledges that, as the developer and owner of real estate in the vicinity of and within the Community, Declarant has a substantial interest in the quality and appearance of improvements within the Community, and in determining that they enhance Declarant's reputation as a developer and do not impair Declarant's ability to market, sell or lease its property. Therefore, no Owner shall commence any activity within the scope of this Article on his/her Lot unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in Declarant's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall act solely in Declarant's interest and shall owe no duty to any other persons. Declarant's rights reserve under this Article shall continue so long as Declarant owns any portion of the real property described in Exhibit "A" attached hereto, unless properly terminated by a Recorded Document.

b. By Association. When the Declarant ceases to own any interest in any of the Community, the Association shall assume the duty to review and act upon any request for approval mentioned above in Section 5.2.1.

3. Guidelines and Procedures.

a. Architectural Guidelines. Declarant may prepare Architectural Guidelines applicable to Lots, which may contain general provisions applicable to all Lots, as well as specific provisions, which vary among the Lots according to

location, use and other factors. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Declarant in considering any application for approval. The Architectural Guidelines are not the exclusive basis for the Declarant's decisions, and compliance with the Architectural Guidelines does not guarantee approval of any application for approval. Further, the Architectural Guidelines may be more restrictive than guidelines followed by Catawba County or as set forth in the International Builder's Code.

Declarant shall have the sole and full authority to amend the Architectural Guidelines as long as it owns any portion of the real property described in Exhibit "A", or has a right to expend the Community pursuant to Section 10.1. Upon termination or delegation of Declarant's right to amend, the Association shall have the authority to amend the Architectural Guidelines. The Association shall maintain a copy of the Architectural Guidelines, as they may exist from time to time, and shall make them available to Members or Owners for inspection and copying upon reasonable notice during the business hours of the Association.

b. Procedures. Except as the Architectural Guidelines otherwise specifically provide, no activity described in Section 5.1 shall commence on any Lot until an application for approval has been submitted and approved by the Declarant. All applications shall include plans and specifications showing site layout, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation and other features of proposed construction, as applicable. The Declarant may consider any factors it deems relevant, including without limitation, harmony of external design with surrounding structures and environment. Decisions may be based solely on aesthetic considerations. Each Owner shall acknowledge that determinations as to such matters are purely subjective and opinions may vary as to the desirability or attractiveness of particular improvements.

In any event, the Reviewer shall notify the applicant in writing of a final determination within forty-five (45) days after its receipt of a completed application and all required information. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service or sent via electronic communication.

If construction does not commence within one (1) year of approval of said plans, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval prior to commencing construction of any improvements.

4. No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case

it may unreasonable to require changes to the improvements involved, but the Declarant may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a binding precedent in any other matter or waiver of the right to withhold approval as to any similar applications, plans or other matters subsequently or additionally submitted for approval.

5. Variances. The Declarant may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall be effective unless in writing, be contrary to this Declaration or estop the Declarant from denying a variance in other circumstances.

6. Limitations of Liability. The standards and procedures set out in this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any person. Review and approval of an application pursuant to this Article may be based on aesthetic consideration only. The Declarant shall not be responsible for ensuring (a) the structural integrity or soundness of approved constructions or modifications; (b) compliance with building codes and other governmental requirements; (c) that Lots are comparable quality, value, size or of similar design, aesthetically pleasing or otherwise acceptable to the neighboring property owners; (d) that views from any other Lots or the Common Areas are protected; or (e) that no defects exist in the approved construction.

Declarant, the Association, the Board or any member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the actions, inactions, integrity, financial condition, or quality work of any contractor or its subcontractors, employees or agents; or any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the Association shall defend and indemnify the Board and any members thereof as provided in the Bylaws.

7. Certificate of Compliance. Any Owner may request that the Declarant issue a certificate of architectural compliance certifying that such Owner's Lot has no known violations of this Article or the Architectural Guidelines. The Association shall either grantor deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall stop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

8. View Impairment. Neither the Declarant nor the Association guarantee or represent that any view over and across any portion of the Community or any adjacent property will be preserved without impairment. Any additions or changes, whether occurring in the course of developing or maintaining the Community, may diminish or

obstruct any view from Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

ARTICLE FIVE

Maintenance and Repair

1. General. All areas within the Property and all areas covered by easements or licenses owned or held by the Association shall be maintained to the Community-Wide Standard and to all other standards stated in this Declaration, any Supplemental Declaration and the Bylaws, Rules and Regulations of the Association. The Association and individual Owners shall be responsible for such maintenance, as provided in this Article.

2. Association Responsibility. Prior to their acceptance for public or private maintenance, the Association shall maintain any roads, streets, walks, entranceways, cul-de-sacs, and utilities in the Community. Such maintenance shall include repair and reconstruction, when necessary. Maintenance of the roads, streets, entranceways, and cul-de-sacs in the Community shall conform to the standard of maintenance (if one is ascertainable), which would be required by the North Carolina Department of Transportation or other governmental entity before it would accept such roads, streets, entranceways and cul-de-sacs for maintenance.

The Association shall also maintain the following:

a. All landscaped rights-of-way and all entry features;

b. All Common Areas, and all landscaping, paving, streets, structures and improvements of any nature located thereon; and

c. All ponds, streams and culverts located on the Property which serves as part of any Stormwater Control Facilities; and

d. All subdivision lawns, trees, shrubs, and exterior landscaping on every lot unless homeowner installs an approved rear fence. If a fence is installed, The Association shall be responsible for areas outside the fence and Owner shall be responsible to maintain all areas inside the fence and said maintenance shall comply with all other applicable provisions and restrictions.

3. Owner's Responsibility. Each Owner shall maintain his or her Lot and all unimproved Common Areas along the boundaries of his or her Lot (e.g., area between lot line and curb). Each Owner shall maintain all paving, structures and improvements of any nature whatsoever located on his or her Lot. Each Owner's maintenance of his or her Lot and adjoining, unimproved Common Areas shall include, but not be limited to:

a. Keeping the area free and clear of all litter, trash, refuse and wastes;

b. Keeping exterior lighting and mechanical facilities in working order;

c. Keeping parking areas and driveways in good repair;

d. Complying with all governmental health and police requirements;

e. Repainting of all structures; and

f. Repair of any exterior damage to all structures.

4. Association's Right to Perform Responsibility of Owner. If any Owner or Occupant of a Lot fails to perform any of the duties or responsibilities set forth in this subsection, then the Association or Declarant may give such person written notice of such failure and such person must, within ten (10) days after receiving such notice, perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner. Such notice shall be deemed to have been received upon deposit in any official depository of the United States mail, addresses to the party to whom it was intended to be delivered at that party's current address as shown by the records of the Association, and sent by certified mail, return receipt requested.

Should any such person fail to fulfill this duty and responsibility within such period, then the Declarant or the Association acting through its authorized agent or agents, shall have the right and power to enter onto the Lot in question and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise at person. All Owners of a Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Association or the Declarant in performing such work computed at the rate of twelve percent (12.00%) per annum from the date(s) such amounts are expended until repaid to Association or the Declarant, as the case may be, and for all cots and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and shall reimburse the Association or the Declarant, as the case may be, on demand for such costs and expense (including interest as above provided). If such Owner shall fail to reimburse the Association or the Declarant, as the case may be, within thirty (30) days after mailing to such Owner or a statement for such costs and expenses by the Association, or Declarant, the Association has performed the work on the Lot of the delinquent Owner(s), the Association may charge a Specific Assessment for such amounts against the Lot of such Owner, and proceed to collect such Specific Assessment as provided in Article IX below.

5. Cost of Maintenance. All costs of the Association in meeting its responsibilities pursuant to this Section shall be Common Expenses.

6. Conveyance of Common Areas to Association; No Implied Rights. Declarant, or the owner of the property with the consent of the Declarant, may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation with the Catawba County Registry of a non-warranty deed conveying any interest in real

property, and the property shall thereafter be Common Areas to be use and, if and as provided in this Article, maintained by the Association for the benefit of the Members.

The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. Declarant, or the owner of the property with consent of the Declarant, may reserve, by lease, license, easement or otherwise such rights and use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the Office of the Register of Deeds in Catawba County.

7. Liability. Owners, Occupants and their guests shall use the Common Areas and all portions of the Community not contained within a Lot at their own risk, and shall assume responsibility for their personal belongings use or stored thereon. All Owners and Occupants shall have an affirmative duty and responsibility to inspect the Common Areas and all other portions of the Community not containing within any Lot for any defects, perils or other unsafe conditions related to the use and enjoyment thereof. The Association, the Declarant, and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the foregoing property. The Association shall not be liable for injury or damage to any person or property (a) caused by the elements or by any Owner or any other person; (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or from any portion of the Common Property, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line of facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

ARTICLE SIX

Use and Occupancy of Lots and Common Areas

1. Fundamental Restriction on Use. The Lots and Common Areas shall be used for residential and related purposes only, subject to and consistent with the Governing Documents, including the Rules and Regulations; provided that Declarant, the Association, and/or builders approved by Declarant may maintain a business or management office within the Community, and provided that Declarant may maintain information centers, model homes, and sales offices within the Community. Notwithstanding the above, home

business use ancillary to the primary residential use of a Lot is permitted subject to the Rules and Regulations, and any applicable laws and ordinances of Catawba County or the State of North Carolina.

2. Fundamental Restriction on Occupancy. All Occupants of a single Lot shall be members of a single-family unit. For the purposes of this Declaration, a single-family unit is defined as a group of individuals related by blood, marriage, adoption or guardianship, or not more than three (3) persons not so related, living together as a single housekeeping unit. The number of Occupants on each Lot shall be reasonably limited by the Lot's size and facilities.

3. Additional Restrictions on Use and Occupancy of Lots. The use and occupancy of all Lots shall be restricted as follows:

a. Completion of Construction. Once construction of any structure located within the Community has begun, it must be prosecuted diligently and must be completed within twelve (12) months of its commencement, unless otherwise approved in writing by the Declarant.

b. Subdivision of Lots. No dwelling shall be erected on less than one Lot and not Lot shall be subdivided; however, owners of adjoining Lots may adjust a common boundary line, provided that the adjustment conforms in all respects with all applicable governmental regulations and ordinances, and with this Declaration.

c. Subdivision of Common Areas. No Common Area shall be subdivided unless a revised Preliminary Plat and a revised Final Plat showing such subdivision have been submitted and approved by Catawba County.

d. Signs. No signs, billboard or other advertising of any kind shall be displayed to public view on any Lot, right of way or Common Areas. The provision shall not apply to marketing, construction, advertising, or informational signs placed on any Lot, right of way, or Common Areas by Declarant, which have been approved by the Declarant. This provision shall not apply to professionally prepared signs placed on any Lot which are used to advertise a Lot for sale or rent, provided that no such sign shall be larger than 18"x24" and shall be approved by the Declarant. If said signs do not conform with these requirements, or have not be approved by the Declarant, the Association may remove, have removed, or require the removal of any such sign which in its opinion would not otherwise be allowed under Article 5 of this Declaration or as amended or supplemented. A valid easement shall exist on any Lot for such removal by the Association or its agent.

e. Refuse Storage. No Lot shall be used or maintained as a dumping ground for rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing or material be kept upon any Lot that will emit a foul or obnoxious odor, or that will cause any noise that

may disturb the peace and quiet enjoyment of the Occupants of the surrounding Lots. Occupants shall not be allowed to burn trash and garbage on any Lot. All receptacles and storage containers for garbage and trash shall be kept in clean and sanitary conditions, and shall be kept in an enclosed area not subject to view from any person, from any direction.

f. Storage of Building Material. No lumber, brick, stone, cinder block, concrete block, cement or other materials used for building purposes shall be stored upon any Lot long than a reasonable time for the completion of construction in which they are being used**.**

g. Temporary Structures. No temporary structures such as sheds shall be erected or placed on a Lot without the written approval of the Declarant or the Association.

h. Parking and Vehicle Storage. Only licensed and operative vehicles, classified as passenger cars, station wagons, passenger pick-up trucks or passenger vans may be regularly parked in driveways. No vehicles shall be permitted to park regularly on any roadway within the Community. Recreational vehicles must be screen from view from all angles.

i. Offensive Activities Prohibited. No noxious or offensive activity shall be conducted upon any Lot or Common Areas, nor shall anything be conducted thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the Community or the Occupant of any Lot.

j. Underground Utilities. All utility lines serving structures located on the Lots shall be placed underground.

k. Mobile Homes and Manufactured Housing. No mobile home, trailer or manufactured home shall be placed on any Lot, temporarily or permanently.

l. Screening. Boats, boat trailers, campers, satellite dishes, antennae, pet enclosures and the like, shall not be located on a Lot, so as to be visible from any roadway or any other Lot.

m. Fences. All fencing to be built on any Lot shall be approved by the Declarant or Association prior to being placed thereon.

n. Swimming Pools. There shall be no above-ground swimming pools placed on any Lot. In-ground swimming pools shall be permitted, but are subject to approval pursuant to Article V below.

o. Trampolines. Trampolines are prohibited on any Lot.

4. Rules and Regulations. In addition to the restrictions stated above, which may be modified or rescinded only by an amendment to this Declaration, use and occupancy of the Lots and Common Areas shall be subject to the Rules and Regulations, which are intended to govern the day-to-day use and occupancy of the Lots and Common Areas. The initial Rules and Regulations are set forth in **Exhibit B** attached hereto and incorporated herein. In order to adopt and respond to changing or unforeseen circumstances affecting the Community, the Declarant, the Association and the Owners must have the ability to change the Rules and Regulations in an expedited and inexpensive manner. Accordingly, the Rules and Regulations may be amended, supplemented and/or rescinded and restated as set forth herein.

a. Declarant's Authority. During the Declarant Control Period, the Declarant shall have the unilateral right to amend, supplement and/or rescind and restate the Rules of Regulations, without prior notice to the Association or to other Owners; provided that no such action by Declarant may have a materially adverse effect on title to or marketability of any Lot.

b. Board Authority. The Board may amend, supplement and/or rescind and restate the Rules and Regulations. The Boar shall send notice by mail or electronic notification to all Members concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. The Board's decision on such action shall be final, subject only to subsection 4.4.1 above.

c. Members' Authority. Members representing more than fifty percent (50%) of the total votes in the Association meeting duly called for such purpose, may amend, supplement and/or rescind and restate the Rules and Regulations.

d. Conflicts. Nothing in this Article shall authorize the Board to modify, repeal or expand the Architectural Guidelines or any provision of this Declaration. In the event of a conflict between the Architectural Guidelines and the Rules and Regulations, the Architectural Guidelines shall control. In the event of a conflict between this Declaration and the Rules and Regulations, this Declaration shall control.

5. Limitations. The right and ability of the Declarant and the Board of amend, supplement or restate the Rules and Regulations shall be limited as follows:

a. Displays. The rights of Owners to display religious and holiday signs, symbols and decorations inside structures on their Lots of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, but no such display may violate the Community-Wide Standard or violate any other provision of this Declaration.

b. Activities Within Dwelling. No rule established pursuant to this Article shall interfere with the activities carried on within the confines of dwellings, except that the Association may restrict or prohibit any activities that create costs for the Association or other Owners, that create a danger to the health or safety of others, that generate excess noise, traffic, or use of parking facilities, that create unsightly conditions visible outside the dwelling or that otherwise violate the provisions of this Declaration or any applicable governmental law, ordinance or regulation.

c. Alienation. No rule promulgated pursuant to this Section shall prohibit leasing or transfer of any Lot or require consent to the Association or Board for leasing or transfer of any Lot; however, the Association may require a minimum lease term of six (6) months and otherwise regulate the leasing of Lots.

d. Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Lot prior to the adoption of such rule and which was in compliance with all rules previously in force. This limitation shall apply only for the duration of Owner's ownership of the Lot personally, and this right shall not run with the title of the Lot. ***The limitation stated in this subsection shall not apply to amendments to this Declaration.***

6. Common Area Administrative Rules. The Board may promulgate and enforce administrative rules and regulations governing the use and enjoyment of the Common Areas without notice to the Members of any hearing. Examples of such administrative rules and regulations shall include, but not be limited to, setting hours of operation of a recreational facility or allocating or reserving the use of a facility by particular individuals at particular times.

7. Notice to Purchasers and Mortgagees. All prospective purchasers and mortgagees are given notice that use of the Lots and the Common Areas are restricted and governed by the Rules and Regulations, as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use, enjoyment and marketability of his or her Lot shall be affected by the Rules and Regulations which may change from time to time, and that the current Rules and Regulations may not be set forth in a Recorded Document. **Take notice that the Declarant of the Association may have changed the initial Rules and Regulations since the recording of this Declaration**. The Association shall provide a copy of the current Rules and Regulations to any prospective purchaser Member or Mortgagee upon written request and payment of the reasonable cost of such copy.

ARTICLE SEVEN

Repair and Reconstruction

The Association shall have the authority and duty to repair and reconstruct Common Areas or other property which the Association is obligated to insure ("Insured Property") that is damaged or destroyed unless such repair or reconstruction would be

illegal under any state or local ordinance governing health and safety, or Member representing at least 80% of the total vote of the Association vote not to repair or reconstruct.

Except as provided in this Section, the Board shall diligently pursue to completion the repair or reconstruction of that part of the Insured Property damaged or destroyed. The Association may take all necessary or appropriate action to affect such repair or reconstruction. Such repair or reconstruction shall be in accordance with the original plans and specifications unless the Board approves other plans.

The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction of Insured Property. If the proceeds of insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, then the Board, pursuant to Section IX may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in Article IX. Further levies may be in like manner if the amounts collected prove insufficient to complete the repair or reconstruction. The insurance proceeds held by the Association and the amount of any such Special Assessments shall constitute a fund for the payment of costs of repair or reconstruction after casualty. If a balance exists after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners of the Lots in proportion to the contributions made by each Owner to the Association.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the Association shall clear the affected property of all debris and ruins and thereafter shall maintain such improvements in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The cost of removal and landscaping shall be paid for with insurance proceeds. The Association shall retain the remaining proceeds in its general or other funds or shall allocate or distribute such funds as the Board determines appropriate, provided any such distribution of insurance proceeds shall be proportionate to the Members' interests.

ARTICLE EIGHT

Assessments and Association Finances

1. Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Lots, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors. Furthermore, the Association shall be required to maintain an adequate reserve fund for the periodic maintenance, repair and replacement of the Stormwater Control Facilities out of the assessment levied. The maintenance of the Stormwater Control Facilities shall be a Common Expense of the Association.

2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association and any and all assessments levied by

the Association hereunder (including, without limitation, Base Assessments, Special Assessments, and Specific Assessments) and any other charges established pursuant to the terms of this Declaration, including, but not limited to, reasonable finds as may be imposed in accordance with the terms of this Declaration and the Bylaws. In addition to the foregoing, the Board may charge each Owner a service, collection, consulting or administration fee (an "Administrative Fee") in an amount to be determined by the Board from time to time in connection with the assessment and collection of the assessments provided for in this Declaration.

Each such assessment, together with late charges (in an amount determine by the Board from time to time, but not to exceed the greater of Twenty and NO/100 Dollars ($20.00) per month or ten percent (10%) of any assessment installment unpaid or such higher amount as may be permitted by the Act), interest (at a rate not to exceed the lesser or the maximum permitted by law or eighteen (18%) per annum or such other amount as may be permitted by the Planned Community Act), costs of collection, reasonable attorney's fees actually incurred and any Administrative Fee, shall be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot and his or her successor-in-title shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, further, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any First Mortgagee or other purchaser taking title through foreclosure proceedings or deed in lieu of foreclosure.

No Owner may waive or otherwise by exempt from liability for assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot, or non-use of the Common Property. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or directive of any governmental or municipal authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

Assessments shall be paid at a uniform rate per Lot in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice, of assessments for delinquent assessments; provided however, (a) notwithstanding any provision in this Declaration to the contrary, assessments to pay a judgment against the Association may be made only against the Lots in the Community at the time that the judgment was entered; and (b) if any common expense is caused by the negligence or misconduct of any Owner or Occupant, the Association may assess the expenses exclusively against that Owner's Lot.

All sums assessed against any Lot pursuant to this Declaration, together with late charges (in an amount determined by the Board from time to time, but not to exceed the greater of twenty and 00/100 dollars ($20.00) per month or ten percent (10%) of any installment unpaid or such higher amount as may be permitted under the Act), interest on the principal amount due (at a rate not to exceed the lesser of the maximum rate allowed by law or eighteen percent (18%) per annum), costs of collection, reasonable attorney fees actually incurred and any administrative fee when remaining unpaid for thirty (30) days or longer, shall be secured by a lien on such Lot in favor of the Association when the Association files a claim of lien in the Catawba County Clerk of Court's office. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (i) liens and encumbrances recorded before the docketing of the claim of lien, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot. This Section does not affect the priority of a mechanics' and materialmen's' lien.

3. Budgeting and Allocating Common Expenses. Until the Association first levies assessments, Declarant shall be responsible for all Common Expenses. Thereafter, all assessments for Common Expenses shall be levied at least annually in accordance with this Article.

At least sixty (60) days prior to the beginning each of fiscal year, the Board shall prepare and approve a budget of the estimated Common Expenses for the upcoming year. The budget shall include any contributions to made to a reserve fund for repair and replacement of capital assets, based a separate reserve budget which takes into account the number and nature of replaceable assets, the expected life of each asset and each asset's expected repair or replacement cost. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots and the amount be generated through the levy of Base Assessments and Special Assessments against the Lots, as authorized in Article IX. After the Declarant Control Period terminates, the annual Base Assessment shall not be increased by an amount greater than 20% of the annual Base Assessment of the immediately preceding calendar year.

The Association is hereby authorized to levy Base Assessments equally against all Lots subject to assessment to fund the Common Expenses. In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year. Base Assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. Base Assessments may include, without limitations, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, and other services provided by the Association, if any, cleaning and janitor services, landscape maintenance, costs and expenses associated with the operation and maintenance of the storm water drainage system and storm water detention and retention pond(s) in the Community, and expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws

for indemnification of officers and directors in connection with the enforcement of rights and duties of the Association against Owners and others.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by paying any deficit between the Common Expenses and Association funds collected pursuant to the current year's budget, or any portion of any such deficit (in addition to any amounts paid by Declarant), which may be a contribution, an advance against future assessments due from Declarant or a land, in Declarant's discretion. Any such deficit payment shall be disclosed as a line item in the income portion of the budget. Payment of such deficit, or portion thereof, in any year shall not obligate Declarant to continue payment of such deficit in future years, unless otherwise provided in a written agreement between the Association and Declarant.

4. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership. Except as specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of a majority of the Board and the consent of Declarant during the Declarant Control Period. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

5. Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously its authority. Fines levied pursuant to this Declaration, the capital contribution described in Section 9.14, and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which are incurred to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which the Association may offer; (b) expenses of the Association which are incurred to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; (c) expenses of the Association which are incurred as a result of the conduct of a particular Owner or Occupant or the guests, tenants, invitees, licensees of such Owner or Occupant may be assessed against the Lot of such Owner or Occupant.

6. Authority to Assess Owners; Time of Payment. Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Lot on the date that the Lot is first occupied for residential

purposes. A Lot shall be deemed to be occupied for residential purposes when it has been improved with a dwelling for which a certificate of occupancy has been issued and has been conveyed to an Owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy. Any Lot which has been approved by the Declarant for use as a model home for marketing and sale purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other person, so long as such Lot is approved for use as a model home and is not occupied for residential purposes. The first annual Base Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time the assessments commence.

Assessments shall be paid in such manner and on such date as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special assessments for Owners with a history of delinquent payments. If the Board so elects, assessments may be paid in two or more installments. Unless the Board provides otherwise, the Base Assessment shall be due and payable on the first day of each fiscal year. If any Owner is delinquent in paying any assessment or other charges levied on his Lot, the Board may require outstanding balance of all assessments to be paid in full immediately.

7. Subordination of Liens to Mortgages. The lien of assessments authorized herein is hereby made subordinate to the lien of any First Mortgage if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. This subordination shall not relieve the Owner of the Lot of any personal obligation to pay all assessments coming due during such period of ownership; shall not relieve the Lot from the lien provided for, except as eliminated by a foreclosure of said Mortgage; and no sale or transfer of such Lot to the Mortgagee or any other person pursuant to a decree of foreclosure, shall relieve any existing or previous Owner of any personal obligation or relieve such Lot or the then Owner of such Lot from liability for any assessment authorized hereunder that becomes due after such sale and transfer.

8. Remedies of the Association. Any sums or charges (including assessments or installments thereof) assessed against any Lot pursuant to this Declaration, which are not paid when due shall be delinquent. Any such sums delinquent for a period of more than 10 days shall incur a late charge (not to exceed $20.00 per month or 10% of the installment unpaid) and interest (at a rate not to exceed the amount permitted under law or 18%, whichever is lesser). The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date (the "Delinquency Notice"). The Delinquency Notice shall state:

a. The outstanding balance due as of the date of the Delinquency Notice;

b. That the member has fifteen (15) days from the mailing of the Delinquency Notice (the "Grace Period") to pay the outstanding balance without being required to pay attorneys fees and court costs;

c. The name of and contact information for a representative of the Association whom the Member can contact to discuss a payment schedule for the outstanding balance;

d. That if the outstanding balance is not paid within the Grace Period, the Association intends to seek payment of attorneys' fees and court costs.

The Delinquency Notice must be sent by First Class Mail to the Lot of such Member and, if different, to the mailing address of the Member in the Associations' records. If any such sums are not paid within thirty (30) days after the due date, the Board may accelerate and declare immediately due all such sums (including annual assessments or installments thereof) without any further notice being given to the delinquent Owner, and (i) to the extent permitted by applicable law, a lien, as herein provided, shall attach; and (ii) a claim of lien, as herein provided, may be filed in the Catawba County Clerk of Court's Office in the manner provided by law. Such lien shall include interest, all late charges from the date first due and payable, any Administrative Fee, all costs of the collection, and, if the Owner has provided with a Delinquency Notice and failed to pay the outstanding balance set forth therein within fifteen (15) days from the mailing of the Delinquency Notice, court costs and reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law.

Notwithstanding anything to the contrary in this Declaration, if a Member does not contest the collection for the unpaid assessments and enforcement of a lien after the expiration of the Grace Period, then reasonable attorneys fees by the Association shall not exceed $1200.00, or such higher amount as permitted by the Act, not including costs or expenses incurred; provided however, such limitation shall not apply to judicial foreclosures or to proceedings authorized under Section 116(d) or Section 120 of Article 3 of the Act. The collection of the unpaid assessments and enforcement of the lien shall be deemed uncontested as long as the Member does not dispute, contest or raise any objection, defense, offset or counterclaim as to the amount or validity of the unpaid assessments and lien asserted or the Association's rights to collect the debt and enforce the lien.

If any sum assessed against any Lot pursuant to this Declaration remains unpaid after 90 days from the due date, the Association may, as the Board shall determine, institute suit to collect such amounts and/or vote to foreclose its lien. The Association may vote to foreclose the claim of lien in like manner as a mortgage foreclosure under Chapter 45 of the North Carolina General Statutes, or any other method allowed under the law, however (i) the Association may not foreclose its lien if the debt securing the lien consists only of fines imposed by the Association, interest on unpaid fines, or attorney's fees incurred by the Association solely associated with fines imposed by the Association (such liens may only be foreclosed by a judicial foreclosure in Article 29A of Chapter 1); and (ii) any lien securing a debt consisting solely of Administrative Fees may only be enforced by judicial

foreclosures as provided in Article 29A of Chapter 1 of the North Carolina General Statutes. Each Owner, by acceptance of a deed as a party to any other type of conveyance, vests in the Association or its against, to the extent permitted by this Declaration and applicable law, the right and power to bring all actions against him or her personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as a mortgage on real estate under the power of sale under Chapter 45 of the North Carolina General Statutes. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of the Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same.

In addition to the foregoing, in the event that an Owner is at least thirty (30) days delinquent in the payment of any assessment or charge owed to the Association, the Association may suspend the right of such Owner to vote, suspend the right of such Owner to use and enjoy the Common Property and suspend any services or utilities which may be provided to Lots in the Community, subject to any notice requirements imposed by the institutional providers providing such services or utilities in the Community and in accordance with the notice and hearing procedure in the Bylaws.

9. Budget Deficits During Declarant Period. During the Declarant Control Period, Declarant may (but shall not be required to):

a. Declarant may advance funds to the Association sufficient to satisfy any deficit between the Association's actual operating expenses and the sum of the Base, Special and Specific Assessments collected by the Association in any fiscal year. Such advances shall, upon request of Declarant, be evidenced by promissory notes from the Association in favor of the Declarant. Declarant's failure to obtain a promissory note shall not invalidate such debt.

b. Declarant may cause the Association to borrow any amount from a third party at the then prevailing rates for such loan in the local area. Declarant, may in its sole discretion, guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Areas or any of the improvements maintained by the Association shall be given in connection with such loan.

10. Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

11. Statement of Account. Upon written request to any Member, Mortgagee, prospective Mortgagee or prospective purchaser of a Lot, the Association shall issue a

written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot, the amount of the current periodic assessment and the date of which such assessment became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting person personally or by certified mail, first-class postage prepaid, return receipt requested. The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall bind the Association in favor of persons who rely upon it in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within 14 days of receipt of the request, all unpaid assessments that became due before the date of making such request shall be subordinate to the lien of a Mortgagee that acquires interest after requesting such statement.

12. Exempt Property. The following property shall be exempt from payment of the Base Assessments, Specific Assessments and Special Assessments:

a. All Common Areas;

b. Any property dedicated to and accepted by any governmental authority or public utility; and

c. Any and all property owned by the Declarant.

13. Capitalization of Association. Upon the sale of each and every Lot in the Community after it has been improved with a residence for which a certificate of occupancy has been issued, a capital contribution in the pro-rated amount of One-Thousand Two hundred and 00/100 Dollars ($1,200.00) per Lot shall be collected from the purchaser at the closing of such sale for the benefit of the Association (or if not collected at the closing, shall be paid immediately on demand by the Association). This capital contribution shall be a Specific Assessment against the Lot and shall be in addition to, not in lieu of, the annual Base Assessment. The capital contribution shall not be considered an advance payment of the annual Base Assessment. The capital contribution shall be deposited into a specially designated reserve amount of the Association and shall be for the purposes of ensuring that the Association will have cash available to pay Common Expenses, meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board of Directors. This capital contribution may be increased or decreased in the sole and exclusive discretion of the Board; provided, however, that in no event shall this capital contribution equal more than the annual Base Amount for the year in which the closing on the sale of the Lot improved with a residence for which a certificate of occupancy is issued.

ARTICLE NINE

Insurance

1. Association's Responsibility.

a. The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

i. Blanket property insurance for all insurable improvements on the Common Areas insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. All policies shall have policy limits sufficient to cover the full replacement value of the insured improvements. The coverage shall not, however, include any improvements or betterments installed by an Owner or any of the personal property belonging to an Owner. The Association shall be deemed trustee of all Members' interests in all insurance proceeds paid to the Association.

ii. Commercial general liability insurance covering without limitation, liability for personal injuries and activities in connection with the ownership, operation, maintenance, and other use of the Common Areas. The Board shall use its business judgment in deciding upon per occurrence limits for such coverage and shall consider any applicable secondary mortgage guidelines relating to such coverage. The liability insurance shall name, as separately protected insureds, Declarant, any property manager, the Association, the Board, the officers of the Association, the ARC, and their respective representatives, members, agent and employees with respect to any liability arising out of the maintenance or use of the Common Areas.

iii. Workers' compensation insurance and employers' liability insurance, if and to the extent required by law.

iv. Directors' and officers' liability coverage.

v. Commercial crime insurance, including fidelity insurance covering all persons responsible for handling Association funds in an amount determine in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Lots plus reserves on hand.

b. Premiums for all insurance shall be considered Common Expenses unless the Board reasonably determines that other treatment of the premiums is more appropriate. The Association shall include such premiums in the assessments it levies.

c. The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified persons, at least one of who must be familiar with replacement costs in the Catawba County area. All

Association policies shall provide for a certificate of insurance to be furnished to the Association, and upon request, to each Member insured.

d. The policies may provide for a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as Specific Assessments.

e. All insurance coverage obtained by the Board shall:

i. Be written with a company authorized to do business in North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate and carries a Best rating of AA or better;

ii. Be written in the name of the Association as trustee for the benefited parties;

iii. Not be brought into contribution with insurance purchased by Owners, Occupants or their Mortgagees individually;

iv. Contain an inflation guard endorsement;

v. Include an agreed amount endorsement, if the policy contains a coinsurance clause;

vi. Provide that each Owner is an insured person under the policies with respect to liability arising out of such Owner's membership in the Association or intent in the Common Areas as a Member in the Association (provided, this provision shall not be construed as giving any Owner any interests in the Common Areas other than that of a Member);

vii. Include an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer conditioning recovery on account of an act or omission of any one or more Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

viii. Include an endorsement precluding the insurer from denying a claim by an Owner or conditioning recovering under the policy based

upon or due to the negligent acts or omissions of the Association or any other Owner.

f. In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insured for claims arising in connection with the ownership, existence, use or management of the Common Areas and provide: (a) a waiver of subrogation as to any claims against the Association's board of directors, officers, employees and its manager, or the Owners and their tenants, servants, agents and guests; (b) a waiver of the insurer's rights to repair and reconstruct instead of paying cash; and (c) an endorsement requiring at least 30 days prior written notice to the Association of any cancellation, substantial modification or non-renewal.

2. Owner's Responsibility.

a. Each Owner of a Lot shall be responsible for obtaining and maintaining at all times hazard insurance at their own expense covering all portions of the Owner's Lot, including structures and improvements on the Lot and Owner's personal property. In addition, to the extent not insured by policies of the Association or the extent insurable losses result in the payment of deductibles under the Association's policies, every Owner shall obtain and maintain at all times insurance covering consequential damages to any other Lot or the Common Areas due to occurrences originating with the Owner's Lot and caused by the Owner's negligence, the Owner's failure to maintain the Owner's Lot or any other casualty within the Lot, which caused damage to any other Lot or Common Areas. Additionally, each Owner of a Lot, at their option, obtain insurance at their own expense to cover their personal liability, and to provide such other coverage as they may desire.

b. Owners' policies shall: (i) name the Association as an additional insured; (ii) contain waivers of subrogation and of any reduction of pro rata liability of the insurer as a result of any insurance carried by the Association or of any invalidity arising from any acts of the Association or any other Owners; and (iii) shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to the Association. At the Association's request, Owners shall file a copy of each individual policy or policies covering their Lot and personal property with the Board within ten (10) days after receiving such request. Such Owner shall promptly notify the Association in writing in event such policy is cancelled.

c. No Owner shall do or keep anything on his/her Lot or the Common Areas, which shall cause an increase in the premium for, or the cancellation of any insurance maintained by the Association.

d. In the event that the Association is terminated pursuant to the terms herein, or in the event that the Association otherwise defaults under its maintenance

responsibilities for the Stormwater Control Facilities, each Owner shall be jointly and severally responsible for maintenance of the Stormwater Control Facilities, including payment of any unpaid ad valorem taxes, public assessments for improvements, and unsafe building and public abatement liens charged against the Stormwater Control Facilities and Lots benefitted by those facilities, and including all interest charges thereon, together with the costs and expenses of collection incurred by themselves (or other collecting agent), including court costs and reasonable attorneys' fees actually incurred.

ARTICLE TEN

Easements

1. Owners' Easements of Enjoyment. Except as limited by this Declaration and the Planned Community Act, every Owner shall have a right of use and enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot. Except as limited by this Declaration and the Planned Community Act, any Owner may delegate his rights of use and enjoyment of the Common Areas to the members of his family, his tenants, contract purchasers who reside on the Property, or his guests.

2. Walks, Drives, Parking Areas and Utilities. All areas of the Community shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary, sewers, storm drainage facilities and for the maintenance of and general access to all stormwater control structures, gas lines, telephone and electric power lines, television antenna lines, other utilities, ingress, egress and regress and otherwise as shall be established by Declarant or its predecessor in title, prior to the conveyance of the Property designated to be the Common Areas to the Association; and the Association shall have the power and authority to grant and establish further easements upon, under and across the Common Areas.

3. Encroachments and Declarant's Easement to Correct Drainage. All Lots and the Common Areas shall be subject to easements for the encroachment of initial improvements constructed on any Lots or Common Areas to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps and walls. For a period of twenty-five (25) years from the date of conveyance of the first Lot in a parcel or section, the Declarant reserves a blanket easement and right-of-way on, over and under the ground within that parcel, phase or section to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety and appearance. Such rights expressly include the right to cut any trees, bushes, or shrubbery, make any gradings of the soil or take any other similar action reasonably necessary. After such action has been completed, the Declarant shall restore the affected Property to its original condition to the extent practicable. Declarant shall give reasonable notice of intent to take such action to all affected owners. These rights and reservations are assignable by the Declarant.

4. Easement for Entry Features. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and

maintenance of entry features and similar streetscapes for the Community, over and upon each Lot and all Common Areas. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

5. Construction and Sale Period Easement. Notwithstanding any provisions contained in the Declaration, the Bylaws, the Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration terminates and thereafter so long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across the Community for Declarant and any builder or developer approved by Declarant to maintain and carry on development, construction and sales activities related to property within or near the Community, upon such portion of the Community as Declarant deems necessary.

The Declarant and any builder approved by Declarant may use residences, offices or other buildings owned or leased by Declarant as model residences, offices, and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge.

6. Irrigation. There is hereby reserved to the Declarant and the Association a blanket easement to pump water from ponds, lakes and other bodies of water located within the Community for irrigation purposes.

7. Fence Easement. Declarant reserves an easement across any Lot which borders upon or contains a portion of any water facility, detention pond or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rules, ordinances or plan approval requirements.

8. Easement to Government Entities. An easement is hereby established for municipal, State or public utilities serving the area, their agents and employees, over all Common Areas hereby or hereafter established for setting, removing and reading utility meters, maintaining and replacing utility connections and acting with other purposes consistent with the public safety and welfare, including without limitation, garbage collection, mail delivery, police and fire protection.

9. Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any dwelling is located closer than four (4) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his home. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which existed prior to the commencement of the work as is reasonably practicable.

10. Pedestrian Easement. To the extent that they are not maintained by the Owners of those portions of the Properties on which they are located, the Association shall maintain all Pedestrian Access Easements required to be located on any portion of the Properties pursuant to approved subdivision plans approvals and/or pursuant to plats of the Properties, which may be of record in the Register of Deeds of Catawba County, or any written maintenance agreements with the local municipalities or Catawba County.

ARTICLE ELEVEN

Expansion of the Community

1. Expansion by Declarant. Until all the property described herein has been subjected to this Declaration for twenty (20) years after the recording, Declarant reserves the right, but not the obligation, to subject unilaterally to the provisions of this Declaration all or any portion of the real property which Declarant currently owns or to which Declarant may obtain title in the future. Declarant may transfer or assign this right, provided that the assignee is the developer of or owns at least a portion of the real property described herein, and provided that the transfer or assignment is evidenced by a Recorded Document.

Declarant shall be able to subject additional property to this Declaration by recording an Annexation Declaration describing the property being subjected. The Annexation Declaration shall not require the Members' consent but shall require the consent of the owner of such property, if other than Declarant.

2. Expansion by the Association. Upon termination of the Declarant Control Period, the Association may subject any real property to the provisions of this Declaration with the consent of the Owner of such property, if authorized by the affirmative vote or Members representing sixty-seven percent (67%) of the total existing votes in the Association. The Association shall subject such property by recording an Annexation Declaration describing the property being subjected. Such document shall be executed by the Association and the owner of the subject property, and shall be certified by the Secretary of the Association to have been authorized by the requisite vote of the Members of the Association.

ARTICLE TWELVE

Declarant Rights

1. Reasonable Rights to Develop. Declarant, builders approved by Declarant and/or their contractors or subcontractors may construct improvements to or within the Community, including to the Lots. The completion of such construction and for the sale or other disposal of the Lots is essential to the establishment and welfare of the Community. Therefore, during the Declarant Control Period, nothing in this Declaration or the other Governing Documents shall be construed to:

a. Prevent Declarant, approved builders, or their contractors or subcontractors from doing whatever is reasonably necessary or advisable in connection with the commencement or completion of the above-described work throughout the Community;

b. Prevent Declarant or its representative from erecting, constructing, and maintaining anywhere in the Community such structures as reasonably may be necessary for the conduct of its business of completing the work, establishing Magnolia Cove as a residential community and disposing of the Lots by sale or lease;

c. Prevent Declarant and/or builders approved by Declarant from maintaining such signs and conducting such activities in any part of the Community owned by Declarant and/or builders approved by the Declarant as Declarant and/or builders may deem to be reasonably necessary for the sale, lease or disposition of Lots; or

d. Prevent Declarant and/or builders approved by the Declarant from placing or utilizing on Lots or other property which it owns one or more mobile trailers or temporary structures as a sales office or for construction activities.

Nothing in this Section shall give Declarant and/or builders approved by the Declarant the right to damage any Lot or other property not owned by the Declarant and/or builders approved by Declarant.

2. Marketing and Sales Activity. During the Declarant Control Period, Declarant and builders approved by Declarant may construct, relocate, maintain and carry on upon any Lot that Declarant owns, the builder owns or upon portions of the Common Areas, such facilities and activities as may be reasonably necessary to the construction, marketing or sale of Lots, as determined in Declarant's sole opinion. Such facilities and activities may include, without limitation, business offices, signs, model homes and sales offices. There shall be no limit on the number or size of such facilities. Declarant and said builders approved by Declarant shall have easements for access to and use of such facilities. Declarant reserves the right to remove any personal property used in connection with its activities on the Common Areas upon termination of its rights under this Section.

3. Construction of Improvements. During the Declarant Control Period, Declarant and its employees, agents and designees shall have a right to access and use an easement over and upon all of the Common Areas for the purpose of making, construction and installing such improvements to the Common Areas as it deems appropriate, and in its sole discretion.

4. Rights to Approve Additional Covenants. During the Declarant Control Period, no person or entity shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Community without the Declarant's prior written approval. Any instrument recorded without such consent shall be void and of no force and effect unless Declarant subsequently consents in a Recorded Document.

5. Right to Transfer or Assign Declarant Rights. Any or all of Declarant's rights or obligations set forth in this Declaration or the Bylaws may be transferred in whole or in part to other persons; however, the transfer shall not reduce an obligation or enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless evidenced by a Recorded Document. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one-time or limited basis, any right reserved to the Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety. In such case it shall not be necessary to record any written instrument.

6. Exclusive Rights to Use Name of Development. During the Declarant Control Period, no person or entity shall the name "Magnolia Cove" or any derivative of such name in any printed or promotional material without Declarant's written consent. However, Owners may use the name "Magnolia Cove" in printed or promotional matters where such term is used solely to specify that the property is located within the community, and the Association shall be entitled to use the words "Magnolia Cove" in its name.

7. Right to Approve Changes in Community Standard. During the Declarant Control Period, no amendment to or modification of any Rules and Regulations shall be effective without the Declarant's written consent.

8. Easement to Inspect and Right to Correct.

a. Easement. Declarant reserves for itself, the Association, and such other person as it may designate perpetual non-exclusive easements throughout the Community to the extent reasonably necessary for the purposes of accessing, inspecting, testing, re-designing or correcting any portion of the Community including Lots and Common Areas. Declarant shall have the right to re-design or correct any part of the Community, including Lots owned by the Declarant and Common Areas.

b. Right of Entry. Entry upon a Lot shall be after reasonable notice, except in an emergency. Entry into a structure on a Lot shall be only after the Declarant notifies the Lot's Owner and agrees with the Owner regarding a reasonable time to enter the structures on such Lot to perform such activities.

c. Damage. Declarant shall promptly repair any damage to a Lot or the Common Areas resulting from the exercise of the easement or right of entry described in subsection 11.8.1 or 11.8.2 of this Section at its own expense. The exercise of the easements shall not unreasonably interfere with the use of any Lot, and entry upon any Lot shall be made after reasonable notice to the Owner or Occupant.

9. Appointment or Removal of Members of the Board. During the Declarant Control Period, the Declarant shall have the right to appoint or remove any member of the Board or officer of the Association.

10. Amendment to Declaration. During the Declarant Control Period, Declarant shall have the right to amend or rescind and restate this Declaration by a Recorded Document, without approval or joinder of the Association or any other Party.

11. Review of Design and Construction. During the Declarant Control Period, Declarant shall have the right to control the quality, design, installation and construction of improvements within the Community as provided in Article V.

ARTICLE THIRTEEN

Dispute Resolution and Litigation

1. Consensus for Association Litigation. Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without the approval of Members representing at least sixty-seven percent (67%) of the total votes of the Association. This Section shall not apply to (i) actions by the Association to enforce the Governing Documents (including, without limitation, the imposition of fines, the suspension of privileges or services or the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Prior to the Association or any Member commencing any judicial or administrative proceeding to which Declarant is a party and which arises out of an alleged defect in the Community or any improvement constructed thereon. Declarant shall have the right to meet in good faith, and discuss the subject of the proceeding with the Members or the particular Member, and to access, inspect, correct the condition of or redesign any portion of the Community, including any improvement as to which a defect is alleged. In addition, the Association or the Member shall notify the builder who constructed such improvements prior to retaining any other expert witness or for other litigation purposes.

2. Alternative Method for Resolving Disputes. Declarant, the Association, its officers, directors and committee members, all person subject to this Declaration, any builder within the Community, and any person not otherwise subject to the Declaration who agrees to submit to this Article agree to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each party covenants and agrees to use good faith efforts to resolve those claims, grievances, or disputes described in this Article using the procedures set forth in this Article.

3. Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any party under the Governing Documents or relating to the design or construction of improvements in the Community (other than matters of aesthetic judgment, which shall not be subject to review) shall be subject to the provisions

of this Article. Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to this Article:

a. Any suit by the Declarant and/or Association against any Bound Party to enforce the provisions of this Declaration;

b. Any suit by the Declarant, Association or any Owner to obtain a temporary restraining order (or equivalent emergency relief) and such ancillary relief as the courts may deem necessary in order to maintain the status quo and preserve the party's ability to enforce the provisions of this Declaration;

c. Any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a claim which would constitute a cause of action independent of the Governing Documents;

d. Any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required in this Article unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article

4. Mandatory Procedures.

a. **Notice**. Any party having a Claim ("Claimant") against any other party ("Respondent") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

i. The nature of the Claim, including the person involved and the Respondent's role in the Claim;

ii. The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

iii. Claimant's proposed remedy; and

iv. That Claimant will meet the Respondent to discuss in good faith ways to resolve the Claim.

b. **Negotiation and Mediation**.

i. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

ii. If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such period as may be agreed upon by the parties), Claimant shall have 30 additional days to submit the Claim to mediation under an independent agency providing dispute resolution services in Catawba County, or the surrounding areas.

iii. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, the Respondents shall be released and discharged from any and all liability to Claimant on account of such Claim; however, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

iv. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by all Parties. If all parties do not settle within 30 days, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings.

v. Within five (5) days of the termination of mediation, the Claimant shall make a final written demand to the Respondent, and the Respondent shall make a final written settlement offer to the Claimant. If the Claimant fails to make a demand for settlement, Claimant's original Notice shall constitute the demand for settlement. If the Respondent fails to make an offer for settlement, the Respondent shall be deemed to have made a null settlement offer.

c. Final and Binding Arbitration.

i. If the Parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the termination of mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the rules of arbitration observed by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and the Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; however, nothing herein shall release or discharge Respondent from any liability to parties other than the Claimant.

ii. This subsection is an agreement to arbitrate and is specifically enforceable under any applicable arbitration laws of the State of North Carolina. The arbitration award shall be final and binding, and judgment entered upon it in any court of competent jurisdiction to the fullest extent permitted under law.

5. Allocation of Costs of Resolving Claims. Each party shall bear its own expenses, including attorneys' fees, and each party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceedings.

6. Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Article and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying party all costs incurred in enforcing such agreement, including, without limitation, attorney's fees and costs.

ARTICLE FOURTEEN

Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of First Mortgages on Lots in the Community. The Provisions of this Article apply both to this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

1. Notices of Action. An institutional holder, insurer or guarantor of a First Mortgage which provides a written request to the Association, such request to state the name and address of such holder, insurer or guarantor, and the street address or parcel number of the Lot to which its Mortgage relates, thereby becoming an ("Eligible Holder"), shall be entitled to timely written notice of:

a. Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Holder;

b. Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage or such Eligible Holder where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner or Occupant which is not cured within sixty (60) days of receiving notice of such violation;

c. Any lapse, cancellation or material modification of any insurance policy the Association maintains; or

d. Any proposed action which would require the consent of specified percentage of Eligible Holders.

2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

3. Notice of Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering a Lot.

4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association request, provided that such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Nothing in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the Bylaws or the Planned Community Act for any of the acts set out in this Article.

ARTICLE FIFTEEN

Changes in Common Areas

1. Condemnation. If a lot or portion thereof shall be taken by eminent domain, compensation and the Owner's interest in the Common Areas shall be appropriately allocated among all other Owners. If any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association and disbursed as follows:

a. If the taking or conveyance involves a portion of the Common Areas on which improvements have been constructed, the Association shall restore or replace said improvements on the remaining Common Areas to the extent available, unless within sixty (60) days after such taking, the Declarant (during the Declarant Control Period) and the Members representing at least 75% of the total votes in the Association shall otherwise agree.

b. If the taking or conveyance does not involve any improvements on the Common Areas, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then the award of net funds shall be disbursed to the Association and used for purposes determined by the Board.

2. Transfer, Partition or Encumbrance of Common Areas.

a. Except as otherwise provided herein, the Common Areas shall not be judicially partitioned or subdivided into Lots, nor shall the ownership of the

Common Areas be otherwise divided or encumbered in any manner after conveyance to the Association, except upon approval of Members representing eighty (80%) of the total votes in the Association, including a majority of the votes held by Members other than the Declarant. If it is still within the Declarant Control Period, then the Declarant shall also be required to consent. There shall be submission and approval by Catawba County, and a revised plat recorded showing such partition or subdivision.

b. The Association shall have the authority, subject to approval of Members representing a majority of all votes in the Association, including a majority of the votes held by Members other than the Declarant, and the consent of the Declarant, to transfer portions of the Common Areas to any appropriate governmental entities or tax-exempt organizations for the maintenance, operation, and preservation thereof; provided that any such transfer shall not remove the rights and benefit of the Association to the Common Areas.

ARTICLE SIXTEEN

Fines and Suspension of Privileges or Services

Notwithstanding any other provision herein, the Board may impose fines on an Owner and/or suspend an Owner's right and privileges to use certain Common Areas for failure of that Owner, his lessee, agents or invitees, to abide by this Declaration, the Rules and Regulations or the administrative rules and regulations governing Common Areas. The procedure for the Board to do so shall be as set forth in the Bylaws. The Board shall not impose any such find or suspension unless and until the Owner charged has been given notice of the charge, opportunity to be heard by and present evidence to the Board and notice of the Board's decision. Suspensions may be imposed for a reasonable period of time and/or until a violation or delinquency is cured.

ARTICLE SEVENTEEN

Miscellaneous Provisions

1. Parties Bound. All persons and entities acquiring any interest in any Lot, including but not limited to lessees, shall be bound by the provisions of this Declaration. All guests and invitees of such persons and entities, and any other occupants of any of the Lots, shall also be bound.

2. Duration. The provisions of this Declaration shall run with and bind the Property in perpetuity, unless and until the Community is terminated pursuant to N.C.G.S. § 47F-2-118.

3. Amendment. Except as provided herein, this Declaration may be amended only by a written instrument executed by the Association and authorized by the affirmative vote of at least two-thirds of all Lots, cast in person or by proxy, at a meeting held in

accordance with the Bylaws of the Association. All amendments must be recorded to become effective.

4. Enforcement. Subject to the provisions herein, the Declarant, any Owner and/or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions or covenants imposed by this Declaration. Any party brining and prosecuting such action shall be entitled to recover reasonable attorney's fees.

5. Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter.

6. Assignment by Declarant. Any or all of the rights, powers, easements and functions and obligations reserved or given to the Declarant may be assigned to the Association, and the Association shall accept and assume responsibility for any and all such rights, powers, easements, functions and obligations when requested by the Declarant. Any such Assignment shall be in writing and recorded in the Register of Deeds of Catawba County.

7. Notice of Sale or Lease. In the event an Owner shall sell or lease his/her Lot, the Owner shall provide the Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and any other such information as the Association may request, within reason. Upon acquisition of a new Lot, each new Owner shall give the Association, in writing, the name and mailing address of the new Owner and such additional information that may be required by the Board.

8. Variances. Notwithstanding anything to the contrary contained herein, the Declarant and/or the Association or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws or any additional rules, regulations or restrictions created pursuant to this Declaration.

9. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

10. Controlling Law. This Declaration shall be construed and governed pursuant to the laws of North Carolina. All references to any statutory provisions shall be construed to include and apply to any subsequent amendments and replacements of said revisions in the General Statutes.

11. Assessments for Public Improvements and Ad Valorem Taxes. The Association shall be authorized to levy Base Assessments against Owners for the payment of any assessments for public improvements or taxes that may be assessed against the Association or the Common Areas. In the event that the Association defaults in the payment to the jurisdiction entitled of any assessments or taxes levied against the Common Areas, and in the event that said default shall continue for a period of six (6) months, each Owner

shall become personally obligated to pay a pro-rated portion of the taxes or assessments to the governing entity. If said amount due is not paid, then it shall become a lien on the property of the Owner.

SIGNATURES TO APPEAR ON FOLLOWING PAGE

IN WITNESS WHEREOF, Magnolia Cove, LLC, as the Declarant hereunder, as caused this instrument to be executed by its duly authorized Manager, all by authority duly granted, as of the day and year first written above.

MAGNOLIA COVE, LLC

BY: _____ (SEAL)
Aaron Guess, Manager

STATE OF NORTH CAROLINA
COUNTY OF Iredell

I, Lori Kolb, Notary Public, certify that Aaron Guess personally appeared before me this day and acknowledged that he is the Manager of MAGNOLIA COVE, LLC, a North Carolina limited liability company and that by authority duly given and as the act of and on behalf of said corporation, the foregoing instrument was signed and sealed in its name by him..

WITNESS my hand and seal this 4th day of November 2020.

LORI KOLB NOTARY PUBLIC IREDELL COUNTY, NC (SEAL)

_____
Notary Public
My Commission Expires: 6/30/2024

EXHIBIT "A"

(the Property)

BEING all of Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, and 80, and those tracts of land entitled "Future Development," "Open Space," and "Remainder of Parent Tract" of Magnolia Cove Phase #1 subdivision as shown on a plat thereof prepared by Miles A. Wright, PLS, recorded in Book of Plats 80 at Page 179-180, Catawba County Registry, which said plat is made a part hereof and is referred to for a further description of said lands.

EXHIBIT "B"

(the Initial Rules and Regulations)

The following restrictions shall apply to all of the Community until such time as they are amended, modified, repealed or limited pursuant to this Declaration.

1. General. The Community shall be used only for residential, recreational and related purposes (which may include, without limitation, an information center and/or sales office for Declarant to assist in the sale of any property or portion thereof described in Exhibit A, offices for any property manager retained by the Association, and business offices for Declarant or the Association consistent with this Declaration.

2. Restricted Activities. The following activities are prohibited within the Community unless expressly authorized by the Board or the Declarant, and then subject to any such conditions as imposed by them:

a. Parking any vehicles on streets or thoroughfares within the Community or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than an enclosed garage; however, exempt from this is any construction, service or delivery vehicle during daylight hours that are present for the benefit of an Owner;

b. Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs or cats not exceeding a combined amount of three (3) or other usual and common household pet. An animal which makes an obnoxious and disturbing noise, or in the Board's judgment, creates a nuisance, shall be removed by the Owner upon request of the Board within a reasonable time.

c. Any activity that emits foul or obnoxious odors outside the Lot or creates noise or other conditions, which tend to disturb the peace or threaten the safety of the Occupants of the Lots;

d. Any activity that violates local, state or federal laws and regulations

e. Subdivision of a Lot into two or more Lots, or changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and recorded, except that Declarant shall be permitted to subdivide or replat any Lots that it may own;

f. Swimming, boating, use of personal flotation devises, or other active use of lakes, ponds or streams within the Community. The Association shall not be responsible for any loss, damage or injury to any person or property arising from the unauthorized use of such bodies of water;

g. Use of any Lot or operation of a timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating schedule over a period of years;

h. Discharge of firearms, provided, the Board shall have no obligation to take any action to prevent or stop that action;

i. On-site storage of gasoline, heating or other fuels, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers, gas grills, and similar tools or equipment;

j. Any business, trade or similar activity, except that an Owner or Occupant residing in a home on a Lot may conduct business activities within the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve door-to-door solicitation of the residents of the Community; (iv) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic which is noticeably greater than the typical traffic of other Lots; (v) the business activity is consistent with the residential character of the Community and does not constitute a nuisance;

k. Capturing, trapping, or killing of wildlife within the Community, except in circumstances posing an imminent threat to safety of persons using the Community;

l. Any activities which materially disturb or destroy vegetation, wildlife, wetlands, or air quality within the Community;

m. Conversion of any carports or garage to finished space for use as an apartment or other integral part of the living area on any Lot;

n. Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures;

o. Any noxious or offensive activity (including, without limitation, baking dogs) which in the reasonable determination of the Boards tends to cause embarrassment, discomfort, annoyance or nuisance of persons using the Common Areas or the occupation of the Lots;

p. Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Lot;

q. Use or discharge of any radio, loudspeaker, horn, whistle, bell or other sound device so as to be audible to Occupants of other Lots, except alarm devices used exclusively for security purposes;

r. Use and discharge of firecrackers or other fireworks;

s. Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Community; except that fertilizers may be used for the treatment of yards on individual Lots;

t. Accumulation of rubbish, trash or garbage except between regular garbage pickups and then only in approved containers. Such containers shall be either screens from view or kept inside, except on garbage pickup days;

u. Obstruction or re-channeling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant or the Board shall have such right provided that said right shall not diminish the value of the Lot, or interfere with the use of any Lot;

v. Operation of a motorized vehicle on pathways or trails within the Community;

w. Any construction, erection, or placement of any object, either permanently or temporarily, on the outside portions of the Lot, except within strict compliance with the Declaration. This shall include, without limitation, any grassy areas, landscaped areas, signs; basketball hoops or any other similar sport equipment; clotheslines; garbage cans; woodpiles; animal pens; dog runs;

x. Use of any exterior decorative lights, including holiday displays that causes an increase in traffic within the community;

3. Prohibited Conditions. The following shall be prohibited within the Community:

a. Installation of any sprinkler or irrigation system or wells of any type, other than those initially installed by Declarant, or a Declarant approved builder, which draws upon water from other resources, such as a lake, creek, stream, or pond

within the Community. However, the Association shall have a right to draw from those resources, if absolutely necessary;

b. Structures, equipment or other items on the exterior portions of a Lot which have a rusty, dilapidated or otherwise appearance that it has fallen into a state or disrepair;

c. Plants, animals, devices or other things whose activities or existence on any Lot are considered noxious, dangerous, unsightly, unpleasant or in any way diminish or destroy the enjoyment of the Community;

d. Installation of exterior decorative items, including but not limited to a statuary or fountains.

4. Leasing of Lots.

"Leasing" is defined as the regular, exclusive occupancy of a Lot by any person other than the Owner for which the Owner receives consideration or benefit.

All leases shall be in writing and shall have a minimum lease term of six (6) months, unless otherwise determined by the Board. No owner shall lease any Lot without first providing said leases with a copy of the Declaration and these Restrictions, and each lease shall requirement acknowledgement of such. A true and accurate copy of each Lease shall be provided to the Board within ten (10) days of execution.