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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OLD WILDLIFE CLUB

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STATE OF NORTH CAROLINA  
COUNTY OF McDOWELL

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR OLD WILDLIFE CLUB**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (this "Declaration") is made this 7 day of August, 2006, by **OLD WILDLIFE CLUB, LLC**, a Delaware limited liability company (the "Declarant"). All capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Declaration.

Declarant is the owner of that certain real property located in McDowell County, North Carolina, which is hereinafter described and defined as the "Property", which Property consists of the real property identified as Lots 1 through 52 and Common Areas marked COS-1 through COS-10 as shown on the Plats recorded in Plat Book 13 at Page 29 through 38 of the McDowell County Registry. The Property is being developed by Declarant as a residential community as a portion of the development known as Old Wildlife Club. Old Wildlife Club is intended to be developed and occupied as a low density, low impact subdivision featuring large homesites and preserved natural areas, and to accommodate family compounds consisting of multiple structures.

Declarant is an Affiliate of Crescent Resources, LLC, a Georgia limited liability company ("Crescent"). Old Wildlife Club is one of several communities containing residential lots and homes to be developed by Crescent and certain other Affiliates of Crescent on or near the shores of Lake James in McDowell County, North Carolina. None of the residential communities to be developed by Declarant, Crescent or the other Affiliates are of sufficient size to support a substantial recreational amenity, and, therefore, Crescent has caused a recreational amenity to be developed and initially owned by Camp Lake James, LLC, a Delaware limited liability company (the "Recreational Facilities Declarant" under the Master Declaration). Such amenity will be located on the "Camp Lake James Tract" (as defined in this Declaration) for use by Owners of Lots in Old Wildlife Club, Owners of Lots in the 1780 Subdivision, and Owners of Lots in other communities developed by Crescent and other Crescent Affiliates and certain other parties as more particularly set forth therein. In addition to being subject to this Declaration, each Owner of a Lot in Old Wildlife Club will be subject to the Master Declaration and will be obligated to pay assessments to the Master Association. This Declaration is an "Additional Declaration" under the terms of the Master Declaration.

Declarant further desires to create a North Carolina non-profit corporation to be known as **OLD WILDLIFE CLUB PROPERTY OWNERS ASSOCIATION, INC.** to which will be delegated and assigned the powers of owning, maintaining and administering the Common Areas, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the Assessments and charges hereinafter created, in order to efficiently preserve, protect and enhance the value of the Project, to ensure, for the benefit of each Owner, the specific rights, privileges and easements in the Common Areas, and to provide for the maintenance and upkeep of the Common Areas, as provided in this Declaration and the Bylaws.

Declarant desires to provide for the preservation of the property values, amenities and opportunities in the Project and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property to the easements, covenants, conditions,

restrictions, charges and liens hereinafter set forth and/or described, with the understanding that, at the option of Declarant, additional restrictions may be imposed with regard to the various phases or sections of the Project.

NOW, THEREFORE, Declarant hereby subjects the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declares that (subject to certain rights of amendment, as hereinafter described) all of the Property shall be held, sold and conveyed subject to such easements, covenants, conditions, restrictions, charges and liens, all of which are for the purpose of protecting the value, desirability and attractiveness of the Project. Subject to the above-described rights of amendment, such easements, covenants, conditions, restrictions, charges and liens shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof and shall inure to the benefit of each owner of the Property or any part thereof.

## ARTICLE I

### DEFINITIONS

Section 1. “Accessory Dwelling” shall have the meaning set forth in Article VII of this Declaration.

Section 2. “Additional Declaration” shall mean and refer to any Declaration of Covenants, Conditions and Restrictions filed in the Office(s) of the Register of Deeds of McDowell County, North Carolina, with regard to a certain Phase, section or portion of the Property, as more particularly described in Article II, Section 2 hereof.

Section 3. “Additional Property” shall mean and refer to additional real estate near or contiguous to the Property and within ten thousand (10,000) feet of any boundary of the Property which may be made subject to the terms of this Declaration in accordance with the provisions of Article II of this Declaration, including, without limitation, the following real property, whether or not within ten thousand (10,000) feet of any boundary of such Property as shown on the maps recorded in Map Book 13 at pages 29 and 38 of the McDowell County Registry.

Section 4. “Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with such Person or is a member or partner of such Person or of an Affiliate of such Person.

Section 5. “Articles of Incorporation” shall mean and refer to the Articles of Incorporation for the Association attached as Exhibit A hereto and incorporated herein by reference.

Section 6. “Association” shall mean and refer to OLD WILDLIFE CLUB PROPERTY OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 7. “Board” or “Board of Directors” shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.



Section 8. “Boatslip” or “Boatslips” shall mean and refer collectively to the Community Boatslips and Water Access Boatslips, together with any additional Boatslips which Declarant may cause or permit to be constructed in accordance with the terms of Article II of this Declaration.

Section 9. “Boatslip Assessments” shall have the meaning set forth in Article V-B below.

Section 10. “Boatslip Lease” or “Boatslip Leases” shall mean and refer to the lease to be entered into by Declarant and Lot Owner who desires to lease a Community Boatslip or a Water Access Boatslip.

Section 11. “Boatslip Lots” shall mean and refer to those Lots in the Project which have, as an appurtenance to the Lot, the right to use a Boatslip pursuant to a Boatslip Lease or other instrument transferring the right to use a Boatslip, in accordance with and as more particularly set forth in Article IV of this Declaration.

Section 12. “Bylaws” shall mean and refer to the Bylaws for the Association attached as Exhibit B hereto and incorporated herein by reference.

Section 13. “Camp Lake James Tract” means that certain tract of land shown as “Camp Lake James” on the Plat recorded in Burke County Register of Deeds at Plat Book 31, Page 23 and in McDowell County Register of Deeds at Plat Book 12, Page 88.

Section 14. “Certificate of Occupancy” shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any structure on the Property.

Section 15. “Common Area” or “Common Areas” shall mean and refer to the Parking Area(s), Street Lights (if any), Septic Easement Areas (prior to reconveyance to Declarant as set forth in Article VII), the Trail System, and the Roadways, drainage facilities and other improvements located therein, collectively, and any other property specifically shown and designated on any Plat as “Common Area,” “Common Open Area,” “Common Open Space,” “Open Space,” “C. O. S. Septic,” or “COS,” including, without limitation, those tracts marked COS-1 through COS-10 as shown on the Plats recorded in Plat Book 13 at Page 29 through 38 of the McDowell County Registry. Common Areas may either be (i) areas initially owned by Declarant in fee simple, and ultimately owned by the Association (except as otherwise provided herein), or (ii) areas or facilities in which the Association is granted easements rights as may be created hereunder, for the common use, benefit and enjoyment of the Owners. The Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Project. The Common Area does not include the Piers or Boatslips; all interests in and rights to use the Piers and Boatslips belong to the Owners having the right to use them, and the costs of maintenance thereof are paid from the Boatslip Assessments collected from such Owners, as more particularly set forth herein. (However, the Piers and Boatslips are “Maintenance Areas” maintained by the Association, as provided herein.)

Section 16. “Community Boatslip” or “Community Boatslips” or “Boatslip(s)” shall mean and refer to the Boatslips located or to be located within the Piers containing up to twenty-

one (21) Boatslips each, adjacent to “COS-3” and “COS-4” as shown on the Plats, together with any additional Community Boatslips which Declarant may cause to be constructed in accordance with the terms of Article II, Section 2 of this Declaration. Owners of Lots other than Waterfront Lots and Water Access Lots may have the right to lease a Community Boatslip, subject to availability, as more particularly provided in Article IV below.

Section 17. “Critical Viewshed Lots” shall mean and refer to those certain lots designated as “CVS” on the Plat. Certain restrictions as set forth herein and in the Guidelines are applicable to the Critical Viewshed Lots in order to protect the existing character of the tree canopy where it is most visible from beyond the Critical Viewshed Lots.

Section 18. “Declarant” shall mean and refer to Old Wildlife Club, LLC, a Delaware limited liability company, its successors in title and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and, provided further, that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the “Declarant” hereunder by the grantor of such conveyance, which grantor shall be the “Declarant” hereunder at the time of such conveyance. Provided further, that upon such designation of such successor Declarant, all rights, duties and obligations of the former Declarant in and to such status as “Declarant” hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the “Declarant” hereunder at any time.

Section 19. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions as same may be amended and/or supplemented from time to time as herein provided.

Section 20. “Dwelling Unit” shall have the meaning set forth in Article VII of this Declaration.

Section 21. “Environmental Areas” shall mean and refer to those portions of the Property designated as Environmental Area on the Plats, upon which only limited activities may be conducted, and which shall remain largely undisturbed, all as more particularly set forth in the Guidelines.

Section 22. “Future Development Lot” shall mean and refer to the tract(s) of land hereinafter designated by Declarant as a Future Development lot and owned by a Crescent affiliate. At this time, there are no Future Development Lots.

Section 23. “Guidelines” shall mean and refer to the Development Guidelines which addresses architectural, design, landscaping and lake buffer matters more particularly described in Article VIII hereof.

Section 24. “Habitat Review Board” shall mean and refer to the committee appointed by the Declarant or the Board to oversee the development and enforcement of developmental and architectural control standards and restrictions with respect to the Project and to perform certain other functions described in the Declaration.

Section 25. “Impervious Surfaces” shall mean and refer to any Improvements which cannot be penetrated by surface water, as determined under applicable governmental regulations.

Section 26. “Improvement” shall have the same meaning as set forth in Article VIII hereof.

Section 27. “Lake” shall mean and refer to that certain body of water commonly known as Lake James, located adjacent to portions of the Project.

Section 28. “Lot” shall mean and refer to any numbered or lettered tract of land (excluding any Common Area) shown on any Plat which is a part of the Property, including Lots 1 - 52 as shown on the Plats recorded in Plat Book 13 at pages 29 through 38 of the McDowell County Register of Deeds, and will include the Future Development Lot at such time as it is subjected to this Declaration and does not include, unless and until subjected to this Declaration, the lots identified on such Plats as “Future Development” which are not currently subject to this Declaration and are not currently part of the Property. No tract of land shall become a “Lot” as that word is used herein until a Plat of the area in which the same is located is recorded in the Office of the Register of Deeds of McDowell County, North Carolina. Additionally, a “Lot” means any other parcel of real estate capable of separate ownership established in the Project and made subject to the Declaration. It is anticipated that some Lots will have more than one Dwelling Unit on such Lot. In the event (if ever) that a condominium regime is established for any portion of the Future Development Lot or other Lots, each unit may be deemed a “Lot” hereunder on such terms as may be set forth in any Supplemental Declaration subjecting the Property under such condominium regime to the terms hereof.

Section 29. “Maintenance Areas” shall mean and refer to certain portions of the Property that are maintained by the Association, as more particularly provided in Article X, Section 7 below, including the Landscape Easements, Trail System, Piers and Boatslips.

Section 30. “Master Association” shall mean and refer to Camp Lake James Master Recreational Association, Inc., a North Carolina non-profit corporation, its successors and assigns, as the property owners association under the Master Declaration.

Section 31. “Master Declaration” shall mean and refer to that certain Master Declaration of Covenants, Conditions, Restrictions, and Easements for Master Recreational Facilities for Camp Lake James as same may be amended and/or supplemented from time to time recorded in the Burke County Register of Deeds Office in Book 1561 at Page 276 and in the McDowell County Register of Deeds Office in Book 867 at Page 444.

Section 32. “Member” shall mean and refer to every person or entity who holds membership in the Association.

Section 33. “Mortgage” shall mean and refer to any mortgage or deed of trust constituting a first lien on a Lot.

Section 34. “Mortgagee” shall mean the owner and holder of a Mortgage at the time such term is being applied. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner’s Lot.

Section 35. “Occupant” shall mean and refer to any person occupying all or any portion of a Lot or the Property for any period of time, regardless of whether such person is a tenant of the Owner of such Lot or portion of the Property.

Section 36. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or other portion of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 37. “Parking Area” shall mean and refer to the parking lot or lots which may be constructed over certain portions of the Common Area(s), for the common use, benefit and enjoyment of the Owners, their families, guests and invitees.

Section 38. “Period of Declarant Control” shall have the meaning set forth in Article IV hereof.

Section 39. “Person” shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust or other legal entity.

Section 40. “Phase” shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats are recorded in the Office of the Register of Deeds of McDowell County, North Carolina.

Section 41. “Pier” or “Piers” shall mean and refer to the pier or piers containing the Community Boatslips and the Water Access Boatslips, which may be constructed in and over the waters of the Lake, together with any additional piers which Declarant may cause or permit to be constructed in accordance with the terms of Article II of this Declaration.

Section 42. “Pier Zones” shall mean and refer to those areas shown on the Plats designated as “Pier Zone” or “PZ” with corresponding Lot numbers, where Owners of Waterfront Lots may construct a dock or pier in accordance with Article VII, Section 31 of this Declaration.

Section 43. “Plat” shall mean and refer to any plat of the Property or any part of it which is recorded from time to time in the Office(s) of the Register of Deeds of McDowell County, North Carolina, and all revisions thereof, including without limitation the Plats recorded in Plat Book 13 at pages 29 through 38 in the McDowell County Registry.

Section 44. “Private Driveways” shall mean the driveways to be constructed in the Private Driveway Easements. Declarant shall have the exclusive right to construct the Private Driveways within the Private Driveway Easements in the approximate locations shown on the Plat. The Private Driveways shall be maintained in accordance with Article X, Section 8 of this Declaration.

Section 45. “Private Driveway Easements” shall mean and refer to the twenty-five (25) foot perpetual easements over certain Common Area, identified on the Plat as “25’ Private Driveway Easement” which are hereby granted to the Owners of Lots 1, 2, 3, 8, 13, and 31, their

heirs, successors and assigns for utilities service and access, ingress, egress to and from such Lots.

Section 46. “Project” shall mean and refer to the development being developed by Declarant on the Property and commonly known as Old Wildlife Club.

Section 47. “Property” shall mean and refer to all the real property shown on the Plat, including Lots, Roadways and Common Areas, and will include the Future Development Lot at such time as it is subjected to this Declaration, but does not include, unless and until subjected to this Declaration, the lots identified as “Future Development,” which are not currently subject to this Declaration and are not currently part of the Property. “Property” will include such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II hereof, but excluding real property designated on the Plat as being owned by parties other than Declarant.

Section 48. “Protected Lake Buffer” shall have the meaning as set forth in Section 3(b) of Article VIII of this Declaration.

Section 49. “Recreational Facilities Declarant” shall mean and refer to Camp Lake James, LLC, a Delaware limited liability company, the Declarant under the Master Declaration as more particularly defined therein.

Section 50. “Restricted Zone” shall have the meaning set forth in Section 3(b)(iii) of Article VIII of this Declaration.

Section 51. “Roadways” shall mean and refer to the roads, streets, entranceways and cul-de-sacs (if any) in the Project, shown on the Plats, and any other roads, streets, entranceways and cul-de-sacs on the Property and abutting each Lot (but not on a Lot), all to be privately maintained as Common Area by the Association.

Section 52. “Septic Easement” shall mean and refer to those certain septic easements reserved over the Septic Easement Lots for the use of certain Owners, as more particularly described in Article VII.

Section 53. “Septic Easement Areas” shall mean and refer to those portions of the Common Areas labeled on the Map as “SFE” or by similar designation, now or later designated on the map or other document.

Section 54. “Septic System” shall mean and refer to all pipes, drainage fields and related equipment and apparatus installed within a Lot, or, with respect to Lots benefited by Septic Easements, within the Roadways and upon Septic Easement Areas, for the disposal of sewage.

Section 55. “Settlement Lot” or “Settlement Lots” shall mean and refer to Lots 1, 2, 3, 8, 14, 20, 21, 29-40, 50 and 52 upon which more than one residential structure consisting of one Dwelling Unit, and one or more Accessory Dwelling and ancillary structures shall be permitted to be built, as determined by the Habitat Review Board, subject to applicable zoning requirements and approval of the Habitat Review Board.

Section 56. “Street Lights” shall mean and refer to any street lights leased by Declarant and installed upon, along and/or over the rights-of-way of the Roadways, Parking Area(s) (if any), Maintenance Areas and Common Areas.

Section 57. “Supplemental Declaration” shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the office(s) of the Register of Deeds of McDowell County, North Carolina, to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Article II hereof.

Section 58. “Trail System” shall have the meaning set forth in Article X, Section 6 herein. The Trail System is for the benefit of all Owners and shall be maintained by the Association as part of the Common Areas.

Section 59. “Water Access Boatslip” shall mean and refer to those boatslips appurtenant to and leased to Owners of Water Access Lots, as more particularly described in Article IV below, together with any additional Water Access Boatslips which Declarant may cause to be constructed in accordance with the terms of Article II of this Declaration.

Section 60. “Waterfront Lots” shall mean and refer to all Lots with frontage on the Lake and which have an adjacent Pier Zone and, as an appurtenance to the Lot, the right to construct and use a private Pier as more particularly set forth in Article IV of this Declaration. Water Access Lots, although they have frontage on the Lake, do not have an adjacent Pier Zone or the right to construct and use a private Pier, and are not Waterfront Lots.

Section 61. “Water Access Lots” shall mean and refer to Lots 7, 42, 43 and 44 which will have, as an appurtenance to the Lot, the right to use a Water Access Boatslip in accordance with and as more particularly set forth in Article IV of this Declaration. Water Access Lots have frontage on the Lake, but do not have an adjacent Pier Zone or the right to construct and use a private Pier, and are not Waterfront Lots.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 1. Property Made Subject to this Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, each Owner and each party owning record title to any of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Additions to the Property.

(a) Declarant may cause all or a portion or portions of the Additional Property (including Common Areas) to be made subject to the terms and scheme of this Declaration by

executing, recording and filing one or more Supplemental Declarations in the Office(s) of the Register of Deeds of McDowell County, containing a description of the portion of the Additional Property being subjected to this Declaration and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Declarant may also cause additional Piers and/or Boatslips to be constructed and made subject to the terms and scheme of this Declaration by the filing of one or more Supplemental Declarations describing the location and number of Piers and/or Boatslips to be added and containing a statement by Declarant of its intent to extend the operation and effect of this Declaration to the additional Piers and/or Boatslips. Notwithstanding the foregoing, the covenants and restrictions established herein as applied to, or imposed upon, the Additional Property may be altered or modified by the filing of one or more Supplemental Declarations as provided in Subparagraph (b) below. Any such Supplemental Declaration need only be executed by Declarant and the owner of the Additional Property being subjected to this Declaration, and shall not require the execution, joinder or consent of any other party whatsoever. The right set forth in this subsection (a) may be exercised by Declarant at any time and from time to time until December 31, 2026.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Property previously subjected to this Declaration, nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for amendment set forth in this Declaration.

(c) In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners, to subject any Phase, section or portion of the Property owned by Declarant to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the Office(s) of the Register of Deeds of McDowell County covering only such Phase, section or portion of the Property. Such an Additional Declaration may or may not provide for the establishment of a property owners' or condominium association to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Declaration, and to own and/or maintain certain common areas or condominium common elements under such Additional Declaration, which common areas and common elements are reserved for the Owners of Lots that are subject to such Additional Declaration to the exclusion of other Owners. Whether or not a property owners' or condominium association is formed pursuant to such Additional Declaration, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.

(d) Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration and/or any

Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

### ARTICLE III

#### PROPERTY RIGHTS

Section 1. Ownership of Common Areas. Except as otherwise provided herein, Declarant shall convey to the Association the Common Areas to be owned and maintained by the Association or, if said Common Areas are not owned in fee by Declarant but are easement rights, Declarant shall convey said easement rights to the Association. Declarant reserves the right (but shall not be obligated) to construct within the Common Areas, among other things, (i) the Roadways (including pipe lines for the water system and drainage facilities, and other improvements), (ii) Parking Areas, (iii) the Trail System, and (iv) certain additional recreational amenities and facilities, and other related improvements, all for the use and enjoyment of the Owners who are entitled to the use of such Common Areas as provided in this Declaration. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, except as otherwise provided herein, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public. Portions of the Trail System may be located within certain Future Development Lots, if so designated by Declarant, and fee simple title to the land underlying such portions of the Trail System shall be and remain in the applicable Owners, or a property owner's association established pursuant to an Additional Declaration applicable to such Future Development Lot of the property over which such portion of the Trail System is located, subject to the easement rights contained in this Declaration or any applicable Supplemental Declaration.

At such time as Declarant shall convey the Common Areas to the Association, no acceptance or consent by the Association shall be necessary and the recordation of a deed from Declarant to the Association shall be deemed conclusive evidence of the Association's acceptance of such conveyance of such Common Areas in their "as-is, where is" condition, and subject to all matters of record, but free and clear of all deeds of trust or other monetary encumbrances.

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

(a) the right of the Association and the Board to promulgate and enforce reasonable regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas to the Owners and the safety of all Owners within the Common Areas;

(b) the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment or charge against said Owner's Lot remains unpaid for longer than thirty (30) days, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;



(c) the right of the Declarant or the Association to grant or reserve utility, drainage and other easements across the Common Areas (including the Roadways), including, without limitation, easements for the use and maintenance of the Common Areas for drainage fields, wells, Septic Easement Areas and Septic System facilities to serve individual owners of Lots or groups of Owners of Lots, water pipe lines, and drainage facilities, specifically including easements in favor of the City of Marion and/or McDowell County for the installation, operation, maintenance, repair and replacements of water lines;

(d) the right of the Declarant or the Association to grant ingress and egress easements over the Roadways and Common Areas to owners of property adjacent to the Property;

(e) the right of the Declarant or the Association to grant or reserve easements across the Common Areas for the Trail System for the Owners and for owners of other Lots subject to the Master Declaration;

(f) the non-exclusive Septic Easements reserved and granted over, across and under portions of the Common Areas as more particularly described in Article VII of this Declaration.

(g) any and all other applicable provisions of this Declaration, including, without limitation, the provisions of Article III, Section 3 below.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Areas and facilities located thereon to the members of his or her family, his or her guests, invitees, or his or her tenants.

#### ARTICLE IV

#### THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws attached as Exhibit B hereto. In addition, as long as Declarant owns any part of the Property, Declarant shall be a Member of the Association.

Section 2. Classes of Voting Members. The Association shall have three (3) classes of voting membership:

(a) Class I. The Class I Association Members shall be all Association Members with the exception of Declarant and the Recreational Facilities Declarant. Each Class I Association Member shall be entitled to one (1) vote for each Lot owned by such Association Member. When more than one Person owns an interest (other than a leasehold or security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class II. The Class II Association Member shall be Declarant. The Class II Association Member shall be entitled to ten (10) votes for each Lot owned by Declarant. Notwithstanding anything contained herein to the contrary, the Class II Association Membership

shall be perpetual unless terminated by written termination executed by the Declarant. If the Declarant ever terminates the Class II Association Membership, the Declarant shall thereafter hold a Class I Association Membership for each Lot and Future Development Lot it owns.

(c) Class III. The Class III Association Member shall be the Recreational Facilities Declarant as owner of the Future Development Lot and any other portion of the Property hereafter designated as a Future Development Lot or a Lot owned by Recreational Facilities Declarant, at such time as the Future Development Lot and any such other portion of the Property hereafter designated as a Future Development Lot is subjected to this Declaration. The Class III Association Member shall have ten (10) votes for each Future Development Lot and other Lot owned by the Recreational Facilities Declarant that is subject to this Declaration. Notwithstanding anything contained herein to the contrary, the Class III Association Membership shall be perpetual unless terminated by written termination executed by the Recreational Facilities Declarant. If the Recreational Facilities Declarant ever terminates the Class III Association Membership, the Recreational Facilities Declarant shall thereafter hold a Class I Association Membership for each Lot and Future Development Lot it owns.

Section 3. Period of Declarant Control. "Period of Declarant Control" means the period of time during which the Declarant shall at all times be entitled to appoint and remove the Association's Board of Directors and the officers of the Association, and during which the Class I Association Members shall have no right to nominate, elect, or remove, or exercise any vote to nominate, elect, or remove, the Board of Directors, such period of time beginning on the date that the Association is incorporated and ending at such time as Declarant does not own any portion of the Property (whether a Lot, Future Development Lot, or Common Area), or at such earlier time as Declarant terminates such right by execution of a written instrument of termination. Anything to the contrary in this Declaration, the Bylaws, the Articles of Incorporation, or the Planned Community Act notwithstanding, if not sooner ended or terminated, the Period of Declarant Control shall end on December 31, 2026.

During the Period of Declarant Control, the Board shall have the sole and exclusive authority to exercise all powers and rights of and to act in all instances on behalf of the Association, and the Members shall have no authority to exercise such powers or rights or to act by exercise of their votes, except as may be determined by the Board in its discretion, and except as provided with respect to the commencement of judicial or administrative proceedings as provided in Article XII, Section 5, of this Declaration, and those acts that the Planned Community Act or other applicable laws provide may not be undertaken unilaterally by the Board, such as, to the extent required, ratification of the budget as provided in Article V, Section 3 of this Declaration, borrowing of funds to pay operational costs of the Association as provided in Article VI, Section (e) of the Bylaws and conveying fee simple title to all or any part of the Common Area as provided in Article VI, Section (t) of the Bylaws

Section 4. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots, provided the Association shall have no responsibility to distribute such documents. All such documents shall be available upon reasonable notice and during normal business hours, provided the Association shall have the

right to charge the requesting party reasonable costs incurred by the Association in complying with such request, including, without limitation, copy charges. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association. All financial and other records, including records of meetings of the Members and the Board, shall be made available, during reasonable business hours, for examination by any Member and a Member's authorized agents at the principal office of the Association, as required by these bylaws and Chapter 55A of the North Carolina General Statutes. The Association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. The Association shall make an annual income and expense statement and balance sheet available to all Owners at no charge within seventy-five (75) days after the close of the fiscal year to which the information relates. A more extensive compilation, review or audit of the Association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the Board or by the affirmative vote of a majority of the holders of votes in the Association present and voting in person or by proxy at any Annual Meeting or any Special Meeting duly called for that purpose.

Section 5. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days prior written notice to the manager without payment of a termination fee.

Section 6. Maintenance. The Roadways shall be privately maintained by the Association. Such maintenance shall include repair and reconstruction of the Roadways, when necessary, including, but not limited to the swales, medians, bridges and associated landscaping and related improvements along and within the Roadways and shall include any repairs and reconstruction of the Roadways made necessary as a result of any water line construction or repair by McDowell County and/or the City of Marion. The Roadways shall be maintained so as to be passable by pedestrian and vehicular traffic, and to be reasonably free of debris, ruts, standing water, and similar obstacles to passage.

The Common Areas and the Maintenance Areas, together with all utilities, easements and amenities located therein and not otherwise maintained by public entities or utilities or any other party as provided herein, shall be maintained by the Association as more particularly described below:

(a) Maintenance of the entryways to the Project shall include maintenance, repair and reconstruction, when necessary, of any entrance monuments, gate, signage, irrigation, planters and lighting located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the entrance monuments and signage located thereon.

(b) Maintenance of the Parking Area(s) shall include repair, maintenance and reconstruction, when necessary, of the pavement (for any such areas that are paved) and payment of the costs of lighting.

(c) The Common Areas and Maintenance Areas shall be clean and free from debris and maintained in a safe and orderly condition, together with the landscaping thereon (if any), in keeping with the rustic nature of the Project; such maintenance shall include repair or removal and replacement of any landscaping, utilities, or improvements in need of repair to maintain a rustic, "camp" appearance.

(d) Maintenance of the Piers and Boatslips shall include the maintenance, repair and reconstruction, when necessary, of the Piers and Boatslips, including all lighting, water lines and other fixtures, wire, railings, and other facilities located thereon, and providing and paying for utility charges therefor.

(e) The Private Driveways located within the Private Driveway Easements shall be maintained by the Lot Owners benefiting from such driveways (Lots 1, 2, 3, 8, 13, and 31). Such maintenance shall include cleaning, maintaining, repairing, reconstructing and replacing (if destroyed), when necessary, the Private Driveways, so as to be passable by pedestrian and vehicular traffic, and to be reasonably free of debris, ruts, standing water, and similar obstacles.

(f) The Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the improvements within the boundaries thereof, including, without limitation, any dock, pier or boatslip located within the Pier Zone adjacent to any Waterfront Lot, or the Piers and Boatslips. The Owners of such Lots shall be solely responsible for same.

Section 7. Reserve Fund. The Association may establish and maintain a reserve fund for the periodic maintenance, repair and replacement of all or a portion of the Common Areas and Maintenance Areas and in order to fund unanticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board of Directors. Such reserve fund shall be collected and maintained out of the Annual Assessments and Boatslip Assessments, as hereinafter defined. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments or Boatslip Assessments.

Section 8. Piers and Boatslips. Subject to and contingent upon the approval of Duke Energy Corporation ("Duke") and of the Federal Energy Regulatory Commission ("FERC") and any other regulatory body having jurisdiction, Declarant shall have the exclusive right to construct some or all of the Piers and Boatslips (including all improvements located thereon), in its sole and absolute discretion, in the approximate locations shown on the Plat(s) or as otherwise shown in any Supplemental Declaration or other document which may be filed pursuant to the provisions of this Declaration.

There will be two types of Boatslips available for the Owners of certain Lots in the Project: Community Boatslips and Water Access Boatslips.

(A) Community Boatslips. There will be up to twenty-one (21) Community Boatslips. Declarant must obtain the permission of Duke and FERC before it can construct the Community Boatslips and the Piers in which they will be located. The area within which the Community Boatslips and Piers are to be located must be leased from Duke; such lease is hereinafter referred to as the "Duke Lease." The lease will be entered into in accordance with Duke's policy with respect to such leases; currently such policy requires the Declarant and

Association to enter into the Duke Lease as joint lessees, with the Association becoming the sole lessee under the Duke Lease at such time as the Common Area adjacent to the Pier in which the Community Boatslips and Piers are located is conveyed by Declarant to the Association. Even though the Association will be the lessee under the Duke Lease, the Community Boatslips and Pier are **not** Common Area (but are Maintenance Areas) and are to be maintained, together with the Water Access Boatslips, through collection of the Boatslip Assessments from all Boatslip Lot Owners, as provided below, and not from the Annual Assessments.

Declarant may (but shall not be obligated to) offer to lease a Community Boatslip to any Owner of any Lot other than a Waterfront Lot or a Water Access Lot, for such compensation payable to Declarant as is provided in such lease, and may limit the time within which such Owner can accept such offer. If any such Owner to whom a Community Boatslip is offered does not accept such offer within such time limit, such Owner shall have no further right to lease a Community Boatslip, and Declarant shall have no obligation to construct such Community Boatslip.

(B) Water Access Boatslips. The Water Access Boatslips and the Piers in which they are located shall be for the exclusive use and benefit of the Owners of the Water Access Lots. Declarant shall lease a designated Water Access Boatslip to the Owner of each Water Access Lot, subject to Declarant obtaining all permits to construct the Water Access Boatslips, for such compensation payable to Declarant as is provided for in such lease.

(C) Leases of Boatslips. Boatslips will be leased and transferred as follows:

(i) Pursuant to that certain boatslip lease form provided by Declarant (the "Boatslip Lease"), Declarant shall lease one (1) Community Boatslip to each Owner of a Lot who has accepted Declarant's offer to lease a Community Boatslip and one (1) Water Access Boatslip to each Owner of a Water Access Lot. From and after the time such Boatslip Lease has been entered into, each such Lot shall be a Boatslip Lot hereunder. Each Boatslip Lease shall be appurtenant to and may not be separated from the ownership of the applicable Boatslip Lot, except as provided below. DECLARANT AND ASSOCIATION WILL HAVE NO RIGHTS IN OR TO THE PORTION OF THE LAKE WHERE THE BOATSLIPS WILL BE LOCATED, EXCEPT TO THE LIMITED EXTENT PROVIDED IN THE DUKE LEASE AND THE PERMITS, LICENSES, AND APPROVALS GRANTED BY DUKE ENERGY CORPORATION, AND/OR THE FEDERAL ENERGY REGULATORY COMMISSION ("FERC") AND/OR ANY OTHER GOVERNMENTAL AUTHORITIES HAVING JURISDICTION. THE RIGHTS GRANTED PURSUANT TO THE DUKE LEASE AND SUCH PERMITS, LICENSES, AND APPROVALS MAY BE LIMITED IN DURATION AND MAY, SUBSEQUENT TO THE LEASE TO A LOT OWNER, BE SUBJECT TO ADDITIONAL REQUIREMENTS OR FEES IMPOSED BY DUKE ENERGY CORPORATION, FERC, OR ANY OTHER APPLICABLE GOVERNMENTAL AUTHORITY.

(ii) The Lot as to which a Boatslip Lease is entered into shall thereafter be a Boatslip Lot subject to the provisions of Article IV, Section 8(C)(iii) below. Once entered into between Declarant and the Boatslip Lot Owner, the relevant Boatslip Lease shall not be separated from ownership of the Boatslip Lot to which it is appurtenant, but, rather, shall run

with the title to such Boatslip Lot unless and until such Boatslip Lease is assigned by the Boatslip Lot Owner to another Lot Owner in accordance with Article IV, Section 8(C)(iii). In this regard, provided the applicable Boatslip Lease has not been previously assigned in accordance with Article IV, Section 8(C)(iii), any conveyance by a Boatslip Lot Owner of its ownership interest in a Boatslip Lot shall automatically assign to the transferee of such ownership interest all rights and duties of said Boatslip Lot Owner under the Boatslip Lease; provided, however, in such event, the Boatslip Lot Owner and the transferee of the Boatslip Lot Owner's ownership interest in the Boatslip Lot shall immediately execute and record an instrument in the McDowell County Register of Deeds sufficient to provide record evidence of the assignment of the Boatslip Lease (a filed copy of which instrument shall be provided to Declarant, as lessor, and the Association following recordation). Any deed of trust, mortgage or other encumbrance of a Boatslip Lot shall also encumber the Boatslip Lease appurtenant thereto, even if not expressly included therein. Provided, however, no mortgagee, trustee or other person claiming by, through or under any instrument creating any such encumbrance shall by virtue thereof acquire any greater rights in the relevant Boatslip than the Boatslip Lot Owner may have under the Boatslip Lease at the time of such encumbrance; and provided further, such deed of trust, mortgage or other instrument of encumbrance, and the indebtedness secured thereby, shall at all times be and remain subordinate and subject to all of the terms and conditions of the Boatslip Lease and to all of the rights of Declarant (as lessor) thereunder. Any successor to a Boatslip Lot Owner's interest in a Boatslip Lease, whether such interest is acquired by sale, assignment, foreclosure, deed in lieu of foreclosure, power of sale, execution or otherwise, shall take such interest subject to all of the terms, covenants, conditions, duties and obligations of such Boatslip Lot Owner under the Boatslip Lease, shall be deemed to have attorned to Declarant or the Association (as lessor) and shall execute an attornment agreement upon the request of Declarant or the Association (as lessor).

(iii) Any Boatslip Lease of a Community Boatslip may be assigned by the relevant Boatslip Lot Owner only to another Lot Owner. Water Access Boatslips may not be assigned by the relevant Water Access Lot Owner unless part of a conveyance of the Water Access Lot of such Water Access Lot Owner. Upon such assignment, the Boatslip Lot Owner and the assignee of such Boatslip Lot Owner's interest in the Boatslip Lease shall immediately execute and record an instrument in the McDowell County Register of Deeds (a filed copy of which shall be provided to the Association) sufficient to provide record evidence of such assignment. Following such assignment, the assignor's Lot shall automatically cease to be a Boatslip Lot and the assignee's Lot shall thereafter be a Boatslip Lot (until further assignment of said assignee's lease rights), in which case the relevant Boatslip Lease shall then run with the title to such Boatslip Lot as set forth in Article IV, Section 8(C)(ii). No Boatslip Lease shall be separated from the ownership of any Lot and assigned to anyone or any entity other than another Owner in accordance with this Article IV, Section 8(C)(iii) and as provided otherwise in the Declaration.

(iv) Declarant shall have the right to use Boatslips not leased to another Owner and shall have the obligation to pay Boatslip, Supplement Boatslip and Special Boatslip Assessments on any Community Boatslips constructed by Declarant and not leased to another Owner. In addition, notwithstanding any term or provision herein to the contrary, Declarant shall have the right to grant the right to any third party (whether or not such third party owns a Lot) to use any Community Boatslip which has not theretofore been transferred to an Owner,

pursuant to terms and conditions specified by Declarant. At Declarant's option, Declarant shall be entitled to assign all rights and duties of Declarant under any Boatslip Lease and/or the Duke Lease to any person or entity, including, without limitation, the Association, whereupon Declarant shall have no further rights, duties, obligations or liabilities thereunder.

(D) Limits on Use. The use of the Piers and Boatslips is and shall be subject to each of the following:

- (i) the terms of the Boatslip Lease pursuant to which the Boatslip was leased, and any rules and regulations for use promulgated thereunder;
- (ii) all laws, statutes, ordinances and regulations of FERC and all federal, state and local governmental bodies having jurisdiction thereon;
- (iii) the Duke Lease;
- (iv) the conditions and terms of any permit issued by, and the rules and regulations for use established by, Duke, its successors and assigns; and
- (v) any rules and regulations adopted by the Board of Directors.

(E) Rules and Regulations. The Board of Directors, pursuant to the Bylaws attached hereto as Exhibit B, may adopt rules and regulations governing the use, operation and maintenance of the Boatslips, the Piers in which they are located, and the personal conduct thereon of the Members as to the Boatslips.

(F) Piers may be used only by Owners of Boatslip Lots, their families, guests and invitees, and each Boatslip may only be used by the Owner(s) of the Boatslip Lot to which such Boatslip is appurtenant, their families, guests, tenants and invitees.

Section 9. Parking Area. Declarant may construct, and the Association shall maintain, repair and, if destroyed, replace, as a common expense of the Association, paved or unpaved Parking Areas located on the Common Areas. The Parking Areas shall be constructed and maintained in order to provide parking for the Owners, and may be used by Declarant and its assigns and the Owners, their families, guests and invitees, in connection with their use of the Common Areas.

Section 10. Liability Limitations. Neither Declarant, nor any Association Member, nor the Board, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable

law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

## ARTICLE V

### COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Annual, Supplemental Annual, Special and Special Individual Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance document, is deemed to covenant and agrees to pay to the Association Annual Assessments, Supplemental Annual Assessments, Special Assessments and Special Individual Assessments (collectively, the "Assessments"), as hereinafter defined, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, and any fines imposed shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, and any fines imposed shall also be the personal obligation of the Owner, at the time when the assessment fell due, of the Lot against which such assessment or charge is made. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them, provided such assessments or charges, together with interest, costs, and reasonable attorneys' fees, and any fines imposed shall, as set forth above, be a continuing lien upon the Lot against which such assessments or charges are made.

Each Owner shall also be responsible for the payment of assessments in accordance with the Master Declaration. The Master Association, in its sole discretion, may elect to have the dues, fees, charges, and assessments (or any of them) of the Owners billed and collected by the Association hereunder.

Section 2. Purpose of Annual Assessments. The assessments to be levied annually by the Association ("Annual Assessments") shall be used as follows:

(a) to repair, maintain, reconstruct (when necessary) and keep clean and free from debris the Common Areas, the Maintenance Areas, and any improvements and landscaping located thereon, including any necessary removal or replacement of landscaping (excluding those facilities within Septic Easement Areas, which are the responsibility of certain Owners to maintain as provided in Article VII of this Declaration);

(b) to maintain, repair, replace and operate the Roadways to the standards set forth herein;

(c) to maintain, operate, repair and reconstruct, when necessary, the entryway to the Project, including any entrance monuments, gate, signage, irrigation, planters, landscaping and lighting located thereon;



(d) to maintain and repair the swales and medians, bridges and any associated Street Lights, landscaping and related improvements along and within the Roadways;

(e) to pay all ad valorem taxes levied against the Common Areas and any other property owned by the Association;

(f) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;

(g) to pay all architectural, legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;

(h) to carry out all other purposes and duties of the Association, the Board of Directors and the Habitat Review Board as stated in the Articles, the Bylaws and in this Declaration; and

(i) to maintain contingency reserves for the purposes set forth in Article IV hereof in amounts as determined by the Board of Directors;

The expenses of the Association for the foregoing are sometimes referred to herein as "common expenses."

Section 3. Payment of Annual Assessments; Due Dates. Each Owner of a Lot shall pay to the Association Annual Assessments as hereinafter set forth.

(a) Annual Assessments provided for herein shall commence as to all Lots shown on a Plat of any Phase of the Property as of January 1, 2007. The Annual Assessment amount for the calendar year beginning January 1, 2007, shall be \$1,200.00 per Lot. The Annual Assessments amount for each and every year thereafter shall be in an amount as set by the Board of Directors, in accordance with the terms of this Article V. Annual Assessments shall be due and payable annually in advance on January 1 of each calendar year. The Board of Directors shall prepare an annual budget and fix the amount of the Annual Assessments as to each Lot for any calendar year on or before December 1 of the prior calendar year, and the Association shall send written notice of the amount of the Annual Assessments, as well as the amount of the payment due, to each Owner on or before December 15 of the prior calendar year. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c), or other applicable law, the Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. The budget will be ratified unless: (a) if such vote is taken during to the Period of Declarant Control, at such meeting Members exercising ninety percent (90.0%) of the votes in the Association reject the budget; (b) if such vote is taken after the Period of Declarant Control, at such meeting Members exercising a majority of the votes in the Association reject the budget.

The failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay Annual Assessments.

(b) If the Board of Directors shall, during any calendar year, determine that the important and essential functions of the Association cannot be funded by the Annual Assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental Annual Assessment (“Supplemental Annual Assessment”), subject to the procedures set forth in Article V, Section 3 above.

(c) With respect to any Lot conveyed by Declarant, the purchaser of such Lot shall pay to the Association at closing the amount of the Annual Assessment for the installment period in which the closing occurs on such Lot, prorated based upon the number of days remaining in such installment period. With respect to any Lot conveyed by any Owner other than Declarant, the amount of the Annual Assessment applicable to such Lot for the installment period in which such closing occurs shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

Section 4. Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment (“Special Assessment”) applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) the construction of any Common Area and/or Maintenance Area improvements which are not originally constructed by Declarant or (ii) the reconstruction, repair or replacement of the Common Areas and/or Maintenance Areas, including any improvements located thereon, and excluding those facilities within Septic Easement Areas which are the responsibility of certain Owners to maintain as provided in Article VII of this Declaration;

Provided, however, (a) no Class II Association Member or Class III Association Member shall be obligated to pay any Special Assessments on Lots owned by such Member except with such Member’s prior written approval, and (b) any Special Assessment must be approved by Declarant (so long as Declarant owns any part of the Property) and by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration.

Section 5. Special Individual Assessments. In addition to the Annual Assessments and Special Assessments authorized above, the Board of Directors shall have the power to levy a special assessment applicable to any particular Owner (“Special Individual Assessment”) (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas and/or Maintenance Areas, including, without limitation, the Roadways and Septic Easement Area, including all improvements located thereon, whether occasioned by any act or omission of such Owner(s), members of such Owner’s family or such Owner’s agents, guests, employees, tenants or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against any particular Owner relative to such Owner’s failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated by the Association or the Declarant pursuant to this Declaration or the Bylaws. Provided, however, no Class II Association Member or Class III Association Member shall be obligated to pay any Special Individual Assessment except with such Member’s prior written approval. The due date of any Special Individual Assessment levied pursuant to this Article V, Section 5 shall be fixed in the

Board of Directors resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 6. Collection Agent. At the option of the Board of Directors, any person or entity designated by the Board of Directors may act as collection agent for any and all assessments imposed by the Association and/or the Board against the Owners.

Section 7. Assessments Against Lots Owned by Declarant.

Anything to the contrary set forth in this Declaration notwithstanding, Assessments on each Lot owned by a Class II Association Member or Class III Association Member shall be in the reduced amount of ten percent (10%) of the per Lot Assessment amount established by the Association for the Lots owned by Class I Association Members. Furthermore, Declarant shall be entitled to credit against any Assessments on Lots owned by Declarant any and all amounts which Declarant has paid directly for common expenses, or has paid or contributed to the Association for the Association's payment of common expenses.

ARTICLE V-A

COVENANT FOR SEPTIC SYSTEM ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Septic System Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association, in addition to the Annual, Supplemental Annual, Special and Special Individual Assessments provided for herein, Septic System Assessments and Supplemental Septic System Assessments, as hereinafter defined, for the inspection of the ground absorption sewer system or systems serving each Lot, including all pipes, lines, tanks, drain fields, pumps, and related apparatus (collectively, "Septic System"). Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, and any fines imposed, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, and any fines imposed, shall also be the personal obligation of the Owner effective at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them, provided such assessments or charges, together with interest, costs, and reasonable attorneys' fees, and any fines imposed, shall, as set forth above, be a continuing lien upon the Lot against which such assessments or charges are made.

Section 2. Purpose of the Septic System Assessments. The assessments to be levied annually by the Association against each Lot upon which a Septic System has been constructed shall be used to inspect each Septic System to ensure that the Septic Systems are in compliance with any requirements imposed by the Association or any governmental authority. Such assessments, together with the initial inspection fees provided for in Section 3 below, are referred to herein as the "Septic System Assessment." The Association or the manager hired by the

Association shall enter into the contract with the inspector that will perform the inspections described herein.

Section 3. Payment of Septic System Assessment; Due Date. The initial Septic System Assessments provided for herein shall be payable annually, in advance, and shall commence as to each Lot at the time of submission of plans and specifications to the Habitat Review Board as provided in Article X hereof. A one time fee for the inspection of the initial installation of the Septic System (which includes three visits by the inspector), currently estimated to be Four Hundred Fifty Dollars (\$450.00), shall be payable to the Association at the time of submission of plans and specifications to the Habitat Review Board. This fee for inspection of the initial installation is in addition to the Septic System Assessment for annual inspection of completed Septic Systems. If more than three visits by the inspector are needed to verify the proper initial installation of a Septic System, the cost of such additional visits by the inspector shall be paid by the Lot Owner to the Association at the rate of \$200.00 per inspection, which fee may be subject to change. A separate annual Septic System Assessment for the inspection of all completed Septic Systems shall be payable annually by each Owner of a Lot upon which a Septic System or Systems is located. The initial Septic System Assessments applicable to all Lots (payable to the Association) upon which Septic Systems have been completed shall initially be Three Hundred and Twenty-five Dollars (\$325.00) per Lot. The Septic System Assessments for each and every year thereafter shall be in the amount of Three Hundred Twenty-five Dollars (\$325.00) or the amount as set by the Board of Directors, in accordance with Section 4 of this Article V-A and shall be due and payable no later than January 31 of each such year. However, the initial Septic System Assessment for inspection of completed Septic Systems shall be payable at the time plans and specifications are submitted to the Habitat Review Board and shall constitute payment for the one (1) year period beginning on the date of submission. The second annual Septic System Assessment for inspection of completed Septic Systems shall be due and payable on the first anniversary of the payment of the initial Septic System Assessment; shall be in the amount established by the Board of Directors of the Association for that calendar year; and shall be prorated from the due date thereof through the end of the calendar year in which it is paid. The third and all subsequent annual Septic System Assessments for inspection of completed Septic Systems shall be due and payable on a calendar year basis, on or before January 31 of each calendar year, as set forth above. The Board of Directors shall adopt a proposed budget and fix the amount of the Septic System Assessment as to each Lot for any calendar year on or before December 1 of the prior calendar year, and the Association shall send written notice of the amount of the Septic System Assessment and a summary of the proposed budget to each Lot Owner on or before December 15 of such prior calendar year. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget with regard to the Septic System Assessments, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c) or other applicable law, the Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. The budget will be ratified unless: (a) if such vote is taken during the Period of Declarant Control, at such meeting Members exercising ninety percent (90.0%) of the votes in the Association reject the budget; (b) if such vote is taken after the Period of Declarant Control,

at such meeting Members exercising a majority of the votes in the Association reject the budget. Failure of the Association to send the notice described in this Section shall not relieve the Owners of their liability for Septic System Assessments. Notwithstanding the foregoing, the Board of Directors may alter the dates of the fiscal year for setting the Septic System Assessments, and may increase or decrease the frequency of the collection of the Septic System Assessments (or installments thereof) in any reasonable manner.

Section 4. Supplemental Septic System Assessment. If the Board of Directors shall, during any calendar year, determine that the assessment and inspection fee to ensure the Septic Systems are in compliance with the requirements imposed by the Association or any governmental authority cannot be funded by the Septic System Assessments, the Board may, by vote in accordance with the Bylaws, levy a supplemental Septic System Assessment (“Supplemental Septic System Assessment”), subject to the procedures set forth in Article V-A, Section 3 above.

Section 5. Assessment Rate. Septic System Assessments and Supplemental Septic System Assessments must be fixed at a uniform rate for all Lots.

## ARTICLE V-B

### COVENANT FOR BOATSLIP, SUPPLEMENTAL BOATSLIP AND SPECIAL BOATSLIP ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Boatslip, Supplemental Boatslip and Special Boatslip Assessments. Declarant, for each Boatslip Lot owned within the Property, hereby covenants, and each Owner of any Boatslip Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, or by entering into a Boatslip Lease (or an assignment thereof) or other instrument transferring the right to use a Boatslip for a Boatslip as an appurtenance to such Owner’s Lot as more particularly set forth in Article IV, Section 8 of this Declaration, is deemed to covenant and agree to pay to the Association, in addition to the Annual, Supplemental Annual, Special, Special Individual Assessments, Septic System Assessments and Supplemental Septic System Assessments, provided for herein, Boatslip Assessments, Supplemental Boatslip Assessments and Special Boatslip Assessments, as hereinafter defined, for maintenance and repair costs of the Piers and Boatslips (including all improvements thereon) established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys’ fees, and any fines imposed, shall be a charge and a continuing lien upon the Boatslip Lot against which each such assessment or charge is made and upon the right to use the Pier and Boatslip appurtenant to such Boatslip Lot. Each such assessment or charge, together with interest, costs and reasonable attorneys’ fees, and any fines imposed, shall also be the personal obligation of the Owner of such Boatslip Lot effective at the time when the assessment falls due. The personal obligation for delinquent assessments or charges shall not pass to an Owner’s successors in title unless expressly assumed by them, provided such assessments or charges, together with interest, costs, and reasonable attorneys’ fees, and any fines imposed, shall, as set forth above, be a continuing lien upon the Boatslip Lot against which such assessments or charges are made.

Section 2. Purpose of Boatslip Assessments. The assessments to be levied annually by the Association against each Boatslip Lot (the "Boatslip Assessments") shall be used as follows:

(a) to clean, maintain, repair and reconstruct, when necessary, the Piers and Boatslips, including all lighting and other fixtures, wires, railings and other facilities located thereon (if any), all as more particularly set forth in Article IV, Section 6 of this Declaration;

(b) to provide and pay for lighting of and water service to the Piers and Boatslips (if any) to the extent necessary for the safety and enjoyment of the users thereof;

(c) to pay all ad valorem taxes levied against the Piers and Boatslips and any other property owned by the Association in connection therewith;

(d) to pay all lease payments, if applicable, to Duke Energy Corporation for the lease of the land on which the Piers and Boatslips are located;

(e) to pay the premiums on all insurance carried by the Association in connection with the Piers and Boatslips (including all improvements located thereon) pursuant hereto or pursuant to the Bylaws;

(f) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws in connection with the Piers and Boatslips (including all improvements located thereon); and

(g) to maintain contingency reserves for the purposes set forth in Article IV, Section 7 hereof in amounts as determined by the Board of Directors.

Section 3. Payment of Boatslip Assessments; Due Dates. The Boatslip Assessments provided for herein shall be payable, annually, in advance, and shall commence as to each Boatslip Lot (to which a completed Boatslip is appurtenant), and shall be due and payable thirty (30) days following the execution of the Boatslip Lease for such Boatslip, as set forth in Article IV, Section 8 of this Declaration (such assessment shall be prorated from the date of such lease through the remainder of the calendar year for which such assessment is due). The initial Boatslip Assessments applicable to all Boatslip Lots (if assessed on or before January 1, 2008) shall be Four Hundred and No/100 Dollars (\$400.00) per Boatslip Lot. Boatslip Assessments for each and every year thereafter shall be payable annually in advance on January 1 of each calendar year. The Boatslip Assessments for each and every year thereafter shall be in an amount as set by the Board of Directors, in accordance with Section 3 of this Article V-B, and shall be due and payable annually in advance on January 1 of each calendar year. The Board of Directors shall fix the amount of the Boatslip Assessment as to each Boatslip Lot for any year on or before December 1 of the prior calendar year, and the Association shall send written notice of the amount of the Boatslip Assessment to each Boatslip Lot Owner on or before December 15 of such prior calendar year. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members owning Boatslip Lots to consider ratification of the budget for the Boatslip Assessment as to each Boatslip Lot, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c) or other applicable law, the Board of

Directors shall set a date for a meeting of the Members to consider ratification of the budget for the Boatslip Assessment as to each Boatslip Lot to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. The budget for the Boatslip Assessment as to each Boatslip Lot will be ratified unless: (a) if such vote is taken during the Period of Declarant Control, at such meeting Members of a Boatslip Lot exercising ninety percent (90.0%) of the votes allocated to Boatslip Lots in the Association reject the budget for the Boatslip Assessment as to each Boatslip Lot; (b) if such vote is taken after the Period of Declarant Control, at such meeting Members of a Boatslip Lot exercising a majority of the votes allocated to Boatslip Lots in the Association reject the budget.

Failure of the Association to send the notice described in this Section 3 shall not relieve the Owners of their liability for Boatslip Assessments. Notwithstanding the forgoing, the Board of Directors may alter the dates of the fiscal year for setting the Boatslip Assessments, and may increase or decrease the frequency of the collection of the Boatslip Assessments (or installments thereof) in any reasonable manner.

Section 4. Supplemental Boatslip Assessment. If the Board of Directors shall, during any calendar year, determine that the important and essential functions of the Association relating to the maintenance and repair of the Boatslips and Piers appurtenant to the Boatslip Lot cannot be funded by the Boatslip Assessments, the Board may, by vote in accordance with the Bylaws, levy a supplemental Boatslip Assessment (“Supplemental Boatslip Assessment”), subject to the procedures set forth in Article V-B, Section 3 above.

Section 5. Special Assessments for Boatslip Improvements. In addition to the Boatslip Assessments authorized above, the Association may levy, in any assessment year, a special Boatslip Assessment (the “Special Boatslip Assessment”) applicable to that year only for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair or replacement of the Pier and Boatslips and any capital improvement located thereon, including lighting, water lines and other fixtures, poles, wires, railings and other facilities located thereon and personal property related thereto. Provided, however, (i) any such Special Boatslip Assessment must be approved by Declarant (so long as Declarant owns any part of the Property) and by a vote of a majority of the votes appurtenant to the Boatslip Lots, and (ii) any such Special Boatslip Assessment may be levied only against the Owners of Boatslip Lots.

Section 6. Assessment Rate.

(a) Except as set forth in subsection (b) below, Boatslip, Supplemental Boatslip and Special Boatslip Assessments must be fixed at a uniform rate for all Boatslip Lots;

(b) Boatslip, Supplemental Boatslip and Special Boatslip Assessments for each Boatslip Lot owned by a Class II Association Member or Class III Association Member shall be in the reduced amount of ten percent (10%) of the Boatslip, Supplemental and Special Boatslip Assessments established by the Association for each other Boatslip Lots in the Subdivision owned by Class I Association Members.

## GENERAL ASSESSMENT PROVISIONS

Section 1. Certificate Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 2. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment (or installment thereof) not paid by its due date as set forth herein shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner (or foreclose the lien against the applicable portion of the Property), and interest, late payment charges, fines, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment and assessment lien. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of his or her property or the Common Areas or otherwise.

Section 3. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first Mortgage on a Lot. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to a mortgage foreclosure under any first Mortgage on a Lot, or any proceeding in lieu thereof, however, shall extinguish the lien (but not the personal obligation of the mortgagor or any prior Owner) of such assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may in its sole discretion determine such unpaid assessments to be an Annual Assessments, Supplemental Annual Assessment, Special Assessments or Special Individual Assessments, Boatslip Assessment, Supplemental Boatslip Assessment, Special Boatslip Assessment, Septic System Assessment, Supplemental Septic System Assessment, or a Special Septic System Assessment (as the case may be), as applicable, collectable pro rata from all Owners (or all Boatslip Lot Owners for assessments related to the Boatslips and Piers), including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any first Mortgage on a Lot as above provided.

## ARTICLE VII

## RESTRICTIONS

Section 1. Residential Restrictions. Each Lot shall be used exclusively for single-family, non-transient residential purposes; provided, however, Declarant shall have the right to use the Lots designated from time to time by Declarant for the purpose of construction and operation of construction offices, project management and sales/marketing offices (and for



related uses) for the Project and the Declarant may allow the construction and operation of rental cabins within the Project in future Phases of the Project. No trade, business or business activity of any kind shall be conducted upon a Lot or any part thereof except by Declarant as described hereinabove or except with the written approval of the Board, other than the operation of any rental cabins. Provided, however, the Board may permit a business or business activity to be conducted on a Lot so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of this Declaration, does not create a disturbance and does not unduly increase traffic flow or parking congestion on the Property or in the Project. The Board may issue rules regarding permitted business activities.

Except those to be utilized by Declarant as described hereinabove, and any rental cabins permitted by Declarant in future Phases of the Project, no structures shall be erected, placed, altered, used or permitted to remain on any Lot other than one detached single-family private dwelling (a "Dwelling Unit"), and such other ancillary structures as are approved in advance in writing by the Habitat Review Board pursuant to the Guidelines and as permitted by applicable laws (including zoning and subdivision laws). Such other ancillary structures may include, but are not limited to, garages, storage buildings, studios, tree houses, and similar structures. Notwithstanding the foregoing, Old Wildlife Club Settlement Lots may be permitted to have one Dwelling Unit and other detached single-family private dwellings (each an "Accessory Dwelling"). The Habitat Review Board must approve the number, placement, size, appearance, and materials of construction of all Dwelling Units, Accessory Dwellings and ancillary structures.

All Dwelling Units and ancillary structures shall be used solely for the occupancy of the Owner of the Lot upon which such structure(s) is/are located and such Owner's guests and invitees. No Lot and no Improvements may be leased or rented, or used for hotel or other transient residential purposes; provided, however, (i) Declarant may allow cabins in certain future Phases for rental purposes, and (ii) a Dwelling Unit may be leased provided such lease extends for a term of at least six (6) months, is in writing, limits use of the Dwelling Unit to single family residential purposes, and provides that the tenant is obligated to observe and perform all of the terms and provisions hereof applicable to such Lot and/or Improvements. A copy of each lease must be provided to the Association prior to the tenant taking occupancy.

Subject to the requirements set forth herein and in the Guidelines, fixed piers and floating boat dock facilities incidental to the residential use of Waterfront Lots are expressly permitted only within the Pier Zone (as defined below) of Waterfront Lots upon the condition that they are not rented or otherwise used for remuneration. Furthermore, no boat (including a houseboat), whether existing on a Lot, docked at a Pier or docked at a fixed pier or floating boat dock appurtenant to any Waterfront Lot in the Project, may at any time be used as a residence.

Section 2. Dwelling Unit and Accessory Dwelling Size; Maximum Impervious Surface and Disturbed Area. The square footage requirements hereinafter set forth are enclosed floor area and are exclusive of the area in non-habitable unfinished basements, open porches of any type, attached or detached garages, carports, and unheated non-habitable storage areas, decks, or patios. No Dwelling Unit on a Lot shall contain more than 6,000 square feet except that a Dwelling Unit on a Critical Viewshed Lot shall contain no more than 3,500 square feet. Notwithstanding the preceding sentence, a Settlement Lot shall contain one Dwelling Unit of no

more than 6,000 square feet, and one or more Accessory Dwellings of no more than 3,000 square feet each, except that a Settlement Lot which is also a Critical Viewshed Lot, shall contain one Dwelling Unit of no more than 3,500 square feet and one or more Accessory Dwellings of no more than 2,800 square feet each.

Notwithstanding the foregoing requirements, the Habitat Review Board shall have the right (but not the obligation), because of restrictive topography, lot dimensions or unusual site related conditions or other reasons, to allow variances from such maximum square footage requirements of up to ten percent (10%) of such maximum square footage requirements by granting a specific written variance.

No Dwelling Unit erected upon a Lot shall have an average height greater than 35 feet in accordance with applicable governmental guidelines and no dwelling shall contain more than 1 3/4 stories above ground level or 2 3/4 stories including finished or unfinished basements; provided, however, the Habitat Review Board shall have the right (but not the obligation), because of steep topography, unique Lot configuration or similar reasons, to allow a ten percent (10%) variance of this restriction.

No more than twenty-four percent (24%) of the surface area of any Lot may be covered with Impervious Surfaces. There shall be no disturbance whatsoever of that portion of any Lot having a slope of greater than thirty-five percent (35.0%).

Section 3. HVAC Equipment. No air conditioning or heating equipment or apparatus shall be installed on the ground in front of, or attached to any front wall of, any Dwelling Unit or accessory structure on a Lot. Additionally, air conditioning and heating equipment and apparatus shall be screened from view from Roadways by landscape improvements, as more particularly provided in the Guidelines.

Section 4. Exterior Lighting. Exterior lighting on Lots shall be subject to the applicable requirements and limitations in the Guidelines and shall be subject to the approval of the Habitat Review Board.

Section 5. Fences and Walls. In addition to the restrictions contained elsewhere in this Declaration, only fences or walls (including, without limitation, densely planted hedges, rows or similar landscape barriers) approved in advance by Declarant and/or the Habitat Review Board, in their sole and absolute discretion, shall be used, installed and/or constructed along or near the front, side and/or rear boundary lines of each Lot within the Project. All fences and walls shall be maintained in a structurally sound and attractive manner. No fence or wall shall be erected on any Lot until the Habitat Review Board has given its prior written approval of the color, size, design, materials and location for such fence or wall. Provided, however, the restrictions described in this Section 5 shall not apply to any improvements originally installed by Declarant on any Common Area.

Section 6. Mail and Newspaper Boxes and House Numbers. All mail boxes or newspaper boxes and house numbers shall be constructed or installed on any Lot in accordance with the applicable provisions of the Guidelines.

Section 7. Animals. No animals, livestock or poultry shall be raised, bred or kept on any portion of the Property except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, damage or destruction of property or refuse. Any excrement deposited by an animal on any portion of the Property shall be promptly removed and appropriately disposed of by the owner of such animal. The number of household pets kept or maintained outside the Dwelling Units on a Lot shall not exceed three (3) in number, except for newborn offspring of such household pets which are all under nine (9) months in age. Dogs shall at all times whenever they are outside of a Dwelling Unit be on a leash or otherwise confined in a manner acceptable to the Board. Animal control authorities shall be permitted to enter the Project and the Property to patrol and remove pets and wild animals to the extent allowed by applicable law. All pets shall be registered, licensed and inoculated as required by law. No fenced dog enclosure or other structure for pets may be constructed or maintained on any Lot unless the same has been approved in writing by the Habitat Review Board .

Section 8. Signs. No sign of any kind shall be displayed on any Lot except for sign(s) approved in advance by the Habitat Review Board. Notwithstanding the foregoing, Declarant shall be entitled to erect and maintain signs and billboards advertising the Property, the Project or portions of either, or for any other purpose, on any portion of the Property owned by Declarant or in the Common Areas or Maintenance Areas.

Section 9. Temporary Structures; Structure Materials. No residence or building of a temporary nature, including a construction trailer, shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic or canvas tent, barn, carport, garage, utility building, storage building or other metal, or other type of structure shall be erected on any Lot or attached to any residence. Provided, however, nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto Lots owned by Declarant to be used for storage, or for construction or sales offices.

Section 10. Utilities. All utilities and utility connections shall be located underground, including electrical and telephone lines. Transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear or rear portions of the sides of the buildings constructed on Lots or, if approved by the Habitat Review Board in writing, located elsewhere on the Lot provided they are adequately screened as required by the Habitat Review Board in accordance with the provisions of this Declaration.

Section 11. Sediment Control. Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, straw bale fences, gravel construction entrances, storm water inlet protection and temporary seeding, to the extent deemed reasonably necessary by Declarant or the Habitat Review Board, shall be taken by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Lot in question. All sediment control measures must be maintained until such Lot has been permanently stabilized with respect to soil erosion. Each Owner and each Owner's builder shall be responsible for erosion control protection during any earth-disturbing operation.

Section 12. [Intentionally Omitted].

Section 13. Required Building Envelope; Building Location. No building or other improvement on any Lot (including any stoops or porches, patios, decks, terraces, etc.) shall be erected or permitted to remain outside of the "Required Building Envelope" for that particular Lot as established on the Plat and shown as "Required Building Envelope" or "RBE" on the Plat. Notwithstanding any rear setback restrictions noted on the Plat, no building, including stoops, porches or decks (whether attached or unattached), shall be erected or permitted to remain nearer than one hundred ten (110) feet to the rear (waterside) lot line of any Lot adjoining the waters of Lake James. For purposes of this restriction, the waterside lot line shall mean the nearest approximation (waterside property line) of the contour line of Lake James as noted on the Plat. Pier and dock facilities are exempt from the rear setback restrictions provided they comply with the provisions set forth in Section 31 of this Article VII.

In the event any zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall conform to said requirements.

No masonry mailboxes or other structures or improvements may be constructed or placed within the right-of-way of any Roadway unless otherwise approved by the Habitat Review Board. Declarant hereby reserves the right and easement, benefiting Declarant and the Association and burdening the Property, to go upon any Lot or other portion of the Property in order to remove any mailboxes or other structures or improvements constructed within the right-of-way of any Roadway. Should Declarant or the Association exercise its easement rights pursuant to the terms of this Section 13, the Owner of the nonconforming Lot shall reimburse Declarant or the Association (as applicable) within five (5) business days following the submission of an invoice for any costs or expenses incurred by Declarant or the Association. The exercise or nonexercise of the easement rights contained in this Section 13 shall be subject to the discretion of the Declarant and the Association and neither Declarant nor the Association shall have the obligation to remove any of such mailboxes or other structures or improvements within the right-of-way of any Roadway.

The Association shall have the authority but not the obligation, in its sole discretion, to assess penalties against an Owner who fails to abide by the terms of this Section 13. The penalties authorized by this Section 13 as well as the expenses to be reimbursed Declarant or the Association shall be considered a Special Individual Assessment against the respective Owner's Lot, entitling the Association to the assessment collection remedies specified in Article VI of this Declaration.

Section 14. Minor Setback and Minimum Distance Requirement violations. In the event of the unintentional violation of any of the building setback or minimum distance requirements shown on any plat of all or a part of the Property or established under the terms of this Declaration, in the amount of ten percent (10%) or less of the setback covenant in question, the Board reserves the right, but is not obligated, to waive in writing such violation of the setback or minimum distance requirements upon agreement of the Owner of a Lot upon which the violation occurs and the Owner of any Lot adjoining the violated setback or minimum distance requirement, provided that such change is not in violation of any zoning or subdivision

ordinance or other applicable law or regulation, or, if in violation, provided that a variance or other similar approval has been received from the appropriate governmental authority.

Section 15. Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. During construction of Improvements on a Lot, all rubbish and debris shall be stored and disposed of in accordance with the rules and established by the Habitat Review Board .

Section 16. Combination or Subdivision of Lots. Should the Owner of a Lot own an adjacent Lot(s) and desire that two (2) or more such Lots be considered as one Lot, then such Lots shall (except as provided herein) be considered as one Lot for the purposes of this Declaration upon the recordation in the Office of the Register of Deeds of McDowell County, North Carolina, of an instrument by such Owner expressing such intent (such instrument to refer specifically to this section in this Declaration and to identify the Lots to be considered as one Lot for purposes of this Declaration, and a copy of such recorded instrument shall be promptly delivered by such Owner to the Habitat Review Board ); and in each such case, setback lines, and easements reserved in this Declaration shall be adjusted accordingly by the Habitat Review Board. The Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. With respect to combined Lots, Declarant reserves the right to designate said combined Lots as one (1) Lot or multiple Lots, in Declarant's sole and absolute discretion, for purposes of payment of assessments. No Lot shall be subdivided by sale, lease or otherwise without the prior written consent of Declarant. Provided, however, Declarant reserves the right to change the size, boundaries or dimensions of any Lot owned by Declarant for any reason, including Septic System requirements, and to determine in its sole discretion whether combined Lots are to be treated as one Lot or multiple Lots, or whether multiple Dwelling Units are to be treated as one Lot, including for assessment purposes.

Section 17. Restricted Activities in Common Areas and Maintenance Areas. No cutting of vegetation, dumping, digging, filling, destruction or other waste shall be committed on the Common Areas or the Maintenance Areas. There shall be no obstruction of the Common Areas or the Maintenance Areas, nor shall anything be kept or stored in the Common Areas or the Maintenance Areas, nor shall anything be altered, or constructed or planted in, or removed from, the Common Areas or the Maintenance Areas, without the prior written consent of the Declarant and the Association. Each Owner shall be liable to the Association and/or Declarant for any damage to any Common Area and/or the Maintenance Area caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, agents, employees, or invitees. Provided, however, the provisions in this paragraph shall not apply to Declarant in connection with Declarant's construction activities on the Property.

Section 18. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot, other than in enclosed garages.

Section 19. Camping. No camping whatsoever (including, without limitation, overnight tent and recreational vehicle camping) shall be allowed in the Project.

Section 20. Rules of the Board. All Owners of any Lot shall abide by all rules and regulations adopted by the Board from time to time. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or Declarant for all damages and costs, including attorneys' fees.

Section 21. Hunting. There shall be no hunting or discharge of firearms of any type on the Property.

Section 22. Recreational and Other Equipment.

(a) Recreational equipment (including, but not limited to, basketball backboards and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) may be installed only with the prior written approval of the Habitat Review Board, and must be installed in accordance with the Guidelines. The Habitat Review Board shall have the right to deny the installation of any such recreational equipment in its sole and absolute discretion.

(b) No such recreational equipment shall be located in such a manner as to constitute a nuisance or unsightly condition to adjoining Owners.

(c) No such recreational equipment shall be located within one hundred ten feet (110') of the Lake; no such recreational equipment located on a Lot shall be located within fifty feet (50') of any Common Area

(d) Children's play toys and other moveable equipment of any type (such as lawn mowers, garden tools, etc.) shall not remain repeatedly overnight within any front yard of any Lot, or within the side yards of any Lot located on a Roadway corner, in such number or for such a long period of time as to create a continuing, unsightly condition.

Section 23. Recreational Vehicles. No motorized vehicle used primarily for recreational purposes, including, without limitation, any motorcycle, moped, go-cart, snow mobile, three- or four-wheeled all terrain vehicle, or similar vehicle, may be operated on any Lot or any other part of the Property (including, without limitation, the Trail System, upon which no motorized vehicle whatsoever may be operated), provided Declarant and the Association, and their respective employees, contractors and agents, shall have the right to operate such recreational vehicles in connection with the development, maintenance and operation of the Property.

Section 24. Parking; Storage.

(a) No vehicles, trucks, vans, cars, trailers, construction equipment, etc. may be parked on any Roadway within the Property as shown on the Plats or as otherwise expressly permitted by the Board.

(b) Commercial-use vehicles and trucks not involved with construction activity on the Property and having a carrying capacity and/or size designation greater than or equal to three-fourths (3/4th) ton shall not be permitted to park on the Roadways, driveways or otherwise within the Property, unless stored in an enclosed garage. No vehicle of any size which transports inflammatory or explosive cargo may be kept within the Property at any time. No vehicles that are not in a condition to be normally operated or that do not have a current registration tag may be stored or situated on any Lot unless stored in an enclosed garage.

(c) The Owner of each Lot will be responsible for providing on such Owner's Lot a sufficient parking area for all vehicles normally parked and/or situated on or in regard to such Lot.

(d) No recreational vehicles or related equipment, including any boat, houseboat, trailer, motor home or "camper" vehicle shall be maintained, stored or kept on any portion of the Property, except in an enclosed garage, in an enclosure specifically approved for such maintenance or storage by the Habitat Review Board, or in a location on a Lot that is not visible from the Lake, any Roadway, Common Area, or any other Lot, which location has been approved in advance by the Habitat Review Board.

(e) No construction office trailers may be placed, erected or allowed to remain on any Lots during construction, except as approved in writing by the Habitat Review Board. Provided, however, nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto Lots owned by Declarant to be used as construction or sales offices. Other construction vehicles (trucks, vans, cars, construction equipment, equipment trailers, etc.) may be left overnight on the Property (including any Lot or Roadway) only in accordance with such rules as may be established by the Habitat Review Board.

(f) All automobiles permitted hereunder shall have a current license plate affixed thereto and must be parked on a driveway approved by the Habitat Review Board.

Section 25. Sewage Disposal; Septic Easement. Every Lot shall be served by a Septic System approved by Declarant or the Habitat Review Board. As of the date of recordation of this Declaration, municipal sewer service is not available to the Property, and Declarant makes no representations regarding the future availability of municipal sewer service. All Septic Systems or other private sewage disposal systems shall be approved by, and constructed and maintained in accordance with all the regulations and requirements of, the Habitat Review Board (including all requirements set forth in the Guidelines), the Project's On-Site Waste Water Disposal Booklet (the "Booklet"), and all governmental authorities and regulatory agencies having jurisdiction. All Owners, by purchasing property subject to this Declaration, acknowledge that any governmental permit or approval allowing for the construction and operation of a Septic System or other private sewage disposal system may be limited in duration in accordance with the terms thereof, and neither Declarant, nor the Association, nor the Habitat Review Board, nor the officers, directors, members, employees, agents or affiliates of any of them, shall have any liability arising directly or indirectly out of the inability of an Owner to obtain any such permit or approval (including an extension or continuation) following the initial expiration thereof.

Each Lot Owner shall maintain, in accordance with all rules and regulations and requirements of the Habitat Review Board (including, without limitation, all requirements set forth in the Guidelines) all portions of any Septic System or other sewage disposal system serving such Lot (i) in an orderly condition, clean and free from debris, together with the landscaping thereon (if any), maintaining the foregoing to a "camp" appearance in keeping with the rustic nature of the Project, including any upkeep, repair, removal and replacement of any landscaping, utilities, or improvements located thereon, and (ii) in a good operating condition in compliance with any requirements imposed by the Declarant, the Association, or any governmental authority. If any Septic System or other sewage disposal system serving a Lot is not maintained by the applicable Lot Owner as set forth herein, the Declarant or the Association, in its sole discretion, may enter such Lot to perform such maintenance and may levy a special Septic System assessment ("Special Septic System Assessment") upon the Lot Owner for the purpose of maintaining, repairing or replacing the Septic System or other sewage disposal system serving such Lot, including the Septic Easement Area. In addition to the foregoing, the Association (or its designee) shall have the right to enter any Lot from time to time for purposes of inspecting and/or maintaining any Septic System or other sewage disposal system and may levy a Special Septic System Assessment to pay for any costs incurred in connection with such inspection and/or maintenance, as more particularly described in Section 26 of this Article VII. In this regard, each Owner of a Lot (other than Declarant) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (in addition to other assessments provided for herein) Special Septic System Assessments as levied in the discretion of the Association. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot effective at the time when the assessment fell due.

All Dwelling Units and Improvements to be located upon each Lot within the Property shall have sewer disposal service and facilities provided exclusively by an individual septic tank system to be installed and operated by the Owner of said Lot and each Owner, by acceptance of a deed to the Lot, expressly and permanently waives the right to petition or request sewer service from any governmental authority. Each Lot Owner, on behalf of itself, its heirs, successors and assigns, shall have the right to enforce this covenant against any other Owner of a Lot within the Property, its heirs, successors and assigns

All Septic Systems located on the Property will be approved, constructed and maintained in accordance with all applicable governmental regulations and requirements. Systems requiring pumping shall be subject to North Carolina Department of Environment and Natural Resources ("NCDENR") regulations requiring bi-annual inspections and equipped with audible and visual alarms. An independent contractor shall be employed for the inspections and for emergency response as more particularly described in Article VII, Section 26 below. The inspections at a minimum shall include: evaluation of solids level in the septic tank, proper operation of pump(s) including controls and alarms, check for leaks in any piping, and inspection of condition of drainfields, especially from effluent surfacing.

Non-exclusive easements for the purpose of providing septic service to certain Lots (the "Septic Easement Lots") and for use as septic drainage fields (the "Septic Easements") are hereby



reserved and granted, over, across and under the Septic Easement Areas, labeled as "C.O.S. Septic" on the Map, and along the Roadways to the Septic Easement Lots from the Septic Easement Areas for the Owners of the Septic Easement Lots, designated by map, deed, supplemental declaration, amendment to this Declaration, or other document in the Subdivision:

Each of the Septic Easements shall be an appurtenance to and run with the title to the Septic Easement Lot for which it is reserved. Any deed, deed of trust, mortgage, transfer or other conveyance of any of said Septic Easement Lots shall also transfer the Septic Easement appurtenant to such Septic Easement Lot, even if not expressly included therein.

Each Septic Easement herein reserved and granted shall include the right to construct, install, excavate, dig, build, maintain, operate, remove and reinstall a Septic System and equipment in and upon the Septic Easement Area over which such Septic Easement is reserved, and to clear (and continue to clear as necessary) all trees, brush and other plants and to remove all rocks if necessary for the proper construction, installation and maintenance of said Septic System, all at the sole expense of the Owner of the Septic Easement Lot which the Septic System is to service; provided, however, that if the need to repair said Septic System is caused by the negligent or willful act of the Association, its successors and assigns, their agents, employees, members, invitees or licensees, then the cost to repair shall be borne by the Association or its successors and assigns. Except for damage caused by the negligent or willful act of the Association, its successors and assigns, their agents, employees, members, invitees or licensees as provided above, the Owner of the Septic Easement Lot which the Septic System is to service shall promptly and reasonably restore any portion of the surface of the Septic Easement Area (but not trees, brush or other plants, except grass) disturbed by the installation or maintenance of said Septic System. Should the Owner of such Septic Easement Lot fail to so restore the surface of such Septic Easement Area, in the sole judgment of the Declarant or the Board of Directors, then the Board of Directors shall have the power to specially assess such Owner for the cost of said restoration in accordance with Article V of this Declaration.

In addition to the above-described rights, the Owners of each of the Septic Easement Lots, their agents, independent contractors, successors and assigns, shall have the right of ingress, egress and regress over and across the Septic Easement Area designated for that Septic Easement Lot in order to construct, install and maintain Septic Systems, as described above.

The Owner of the Lot for which a Septic System is being installed shall be responsible for obtaining all necessary environmental permits and other permits for the use of said Septic System and shall hold the Association, its successors and assigns, harmless from any loss, damage or liability relating thereto, except to the extent that such loss, damage or liability results from the negligent or willful act of the Association, its successors and assigns, their agents, employees, members invitees or licensees. Prior to the installation of a Septic System within the Septic Easement Area, the Owner of the Septic Easement Lot for which the Septic System is being installed shall have the proposed location of such Septic System staked and approved by the appropriate governmental authorities, and such Septic System shall be approved by, and constructed and maintained in accordance with all regulations and requirements of all governmental authorities and regulatory agencies having jurisdiction thereover. The Owner of the Septic Easement Lot to which a Septic Easement is appurtenant shall be responsible to operate and maintain the Septic System located on the Septic Easement Area at such Owner's sole cost and expense.

The Declarant, initially, and ultimately the Association, shall hold fee simple title to the Septic Easement. For so long as the Subdivision is not serviced by a public or private sewer line, the Association shall not transfer, mortgage, pledge, encumber or otherwise convey the Septic Easement Area or any portion thereof to any other party without Declarant's consent. The preceding sentence cannot be amended without Declarant's consent, and is not subject to the terms set forth in Article XII dealing with amendments of the Declaration.

The Septic Easements hereby granted and reserved shall run with the title to the Septic Easement Lots to which they are appurtenant and shall be in full force and effect until such time as the Subdivision is serviced by a public or private sewer line servicing said Septic Easement Lots, such that there is no need for a Septic System servicing said Septic Easement Lots. At such time as such Septic Easement Lots are connected to a public or private sewer line and are serviced thereby, then the Septic Easements reserved and granted hereby shall terminate and shall thereafter be null and void and of no further force and effect.

Section 26. Septic System Inspection and Septic Inspection and Repair Easement. The Association shall cause all private Septic Systems located within the Project to be inspected by an independent contractor no less than once a year. Such inspections shall be paid for from the Septic System Assessments provided for in Article V-A above. Such inspections shall be conducted in order to confirm that each such system is properly functioning and is generally in compliance with this Declaration (including, without limitation, the terms of this Article VII, the Booklet and the Guidelines) and any applicable laws, ordinances or governmental regulations. If an inspection reveals that a Septic System is not functioning properly, or is otherwise not in compliance with any applicable law, ordinance or regulations, the inspector shall notify the Association and any other party or agency as required by law. The Association shall notify the Owner of the Lot to which the Septic System is appurtenant of the problem or noncompliance and such Owner shall be responsible for immediately repairing the Septic System at such Owner's sole cost and expense and providing the Association, within thirty (30) days, with proof of such repair. The Association shall be authorized to notify any applicable governmental or regulatory agencies or officials of the malfunctioning or noncompliance of any Septic System located within the Project.

The foregoing notwithstanding, neither Declarant, the Habitat Review Board, the Association, nor its directors, officers, agents or employees shall be responsible for damages or otherwise to anyone by reason of mistake of judgment, omission, negligence or nonfeasance arising out of the inspection services performed pursuant to this Declaration including, without limitation, any damages to any Lot or property by reason of the failure to inspect or the failure of such inspections to detect any malfunction, damage or noncompliance with law.

Declarant hereby reserves a non-exclusive perpetual easement over all property within the Project, including Lots, benefiting Declarant and the Association for the purposes of conducting the Septic System inspections and repairing and/or replacing the Septic System if an Owner fails to repair or replace the Septic System within thirty (30) days of notification by the Association. The Board of Directors shall have the right to levy a Special Individual Assessment against such Lot Owner pursuant to Section 6 of Article V hereof to recover the costs and expenses incurred by the Association in maintaining, repairing or replacing the Lot Owner's Septic System.

Section 27. Nuisances. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's property. No Lot shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within any Lot, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Project. There shall not be maintained on any Lot any plants or animals or device or thing of any sort whose activity or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes and septic emergency alarms, shall be located, installed or maintained upon the exterior of any Dwelling Unit or any unimproved Lot unless required by law.

Section 28. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed Dwelling Units or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. All construction and landscaping must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved in writing by the Habitat Review Board. No construction materials of any kind may be stored within twenty-five (25) feet of any Roadway. Any damage to the Roadways, including swales and medians, or any part of any Common Area, Maintenance Area or any utility system caused by an Owner or Owner's builder or such builder's subcontractors shall be repaired by such responsible Owner. Any builder of Improvements and such builder's subcontractors on any portion of the Property shall keep such portion of the Property free of unsightly construction debris, in accordance with the construction rules established by the Habitat Review Board (or, in the absence of such rules, in accordance with standard construction practices), and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's property in the Project to pay for the cost of repairing any damage to Roadways, Common Area, Maintenance Area or utility system, to pay for the cost of cleaning public and private areas, including the Roadways in the Project, and to pay for the cost of the removal of garbage, trash or other debris, which are occasioned by the activities of an Owner or Owner's builder or such builder's subcontractors during the construction of Improvements.

Section 29. Public Water System; No Private Individual Wells, Irrigation Restrictions. All water supplies necessary to serve the Project (the "Water System"), and all water mains, pipes and other equipment necessary for the operation and maintenance of the Water System, shall be owned, operated, repaired and maintained by the City of Marion and McDowell County duly licensed and operating under the authority granted by the North Carolina Department of Public Utilities Commission. All Owners shall connect to the Water System for domestic water service. The Water System shall be the sole provider of water supply to the Project, and no well may be dug or constructed on any Lot for the purpose of providing domestic water supply;

provided, however, subject to the approval of the Habitat Review Board, wells may be dug or constructed for irrigation systems.

Section 30. Marine Toilets. No water craft equipped with a marine toilet having a fixed or portable holding tank shall be permitted at the Piers or Boatslips or any Waterfront Lot Owner's dock or pier. In addition, no water craft shall be moored at the Piers or Boatslips or any Waterfront Lot Owner's dock or pier if equipped with a through hull or overboard discharge toilet which has not been certified by the United States Coast Guard as an approved marine sanitation device.

Section 31. Docks and Piers. Only the Owner of a Waterfront Lot may construct one (1) pier within the Pier Zone, if any, adjacent to said Waterfront Lot (in accordance with the applicable provisions of the Guidelines), provided that such Lot is not located in an area where the narrowness of a cove precludes construction of a dock or pier as determined by Duke Energy Corporation and/or any governmental entity having jurisdiction at the time such improvements are to be constructed. Any waterfront improvement shall have a low profile and open design to minimize obstruction of neighbors' views, and all such improvements must be submitted to the Habitat Review Board for review and approval in accordance with the Guidelines and the applicable provisions of this Declaration. Enclosed or covered docks, piers, or boat houses and two-story docks and piers will not be allowed. No dock shall contain any solid or other storage-like surface at any level beyond three (3) feet above the dock floor area. No covered, two level, or enclosed piers and docks will be permitted.

The placement, construction, or use of any pier, dock, boatslip structure or other improvement within or upon the waters of the Lake is and shall be subject to each of the following:

- (a) the Guidelines and any easements, restrictions, rules and regulations for construction and use promulgated by the Board and/or the Association;
- (b) all laws, statutes, ordinances and regulations of all Federal, State and local governmental bodies having jurisdiction thereon, including without limitation the Federal Energy Regulatory Commission; and
- (c) rules and regulations, privileges and easements affecting the Property and the waters and submerged land of the Lake established by Duke Energy Corporation, its successors and assigns. (Duke Energy Corporation controls access to, and the use and level of, the waters of the Lake. All Owners, the Association and the Declarant must receive a permit from Duke Energy Corporation [or a successor manager of the Lake, under authority from the Federal Energy Regulatory Commission] prior to any alterations therein.)

No pier, dock, boatslip structure or other similar improvement shall be constructed by Waterfront Lot Owners outside of the area designated as "Pier Zone" on the Plat(s) or in any Supplemental Declaration or other document which may be filed pursuant to the provisions of this Declaration. Additionally, no boat (including a houseboat) docked at a fixed pier or a floating boat dock (appurtenant to any Waterfront Lot) shall be located outside the Pier Zone. Furthermore, each Waterfront Lot Owner shall be entitled to construct only one (1) Pier within

the applicable Pier Zone, and in no event shall mooring posts or similar improvements be constructed within such Pier Zone. ALL WATERFRONT LOT OWNERS, BY PURCHASING PROPERTY SUBJECT TO THIS DECLARATION, ACKNOWLEDGE THAT THEY SHALL BE RESPONSIBLE FOR OBTAINING (AND FOR CONDUCTING ALL REQUIRED ACTIVITIES NECESSARY IN CONNECTION WITH OBTAINING) ANY PERMIT, LICENSE OR LEASE ALLOWING FOR THE CONSTRUCTION AND USE OF ANY PIER, DOCK, BOATSLIP STRUCTURE OR OTHER SIMILAR IMPROVEMENT WITHIN OR UPON THE WATERS OF THE LAKE AND THAT SUCH PERMIT, LICENSE OR LEASE SHALL BE LIMITED IN DURATION, AND NEITHER DECLARANT, NOR THE ASSOCIATION, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AGENTS OR AFFILIATES OF EITHER OF THEM, SHALL HAVE ANY LIABILITY ARISING DIRECTLY OR INDIRECTLY OUT OF OR IN ANY WAY RELATED TO ANY SUCH PERMIT, LICENSE OR LEASE.

Section 32. Boat Ramps. No boat ramps of any kind shall be permitted on any Lot, and no boat shall be placed in (or removed from) the waters of the Lake from any Lot; provided, however, small watercraft such as canoes, dinghies, and kayaks (but not jet skis) may be launched from any Lot if launched without a ramp. All other watercraft shall be launched at a public boat ramp outside the Project. Finally, all boats shall be refueled and maintained at a facility outside the Project.

Section 33. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots. Each Owner shall comply with all laws, regulations, ordinances and other governmental rules and restrictions in regard to the Lot(s) or other portion of the Property owned by such Owner (including, without limitation, applicable zoning, watershed, and lake protection laws, ordinances, rules, and regulations). Furthermore, each Owner shall comply with the conditions, limitations and restrictions set forth in the Guidelines. Furthermore, each Owner, by purchasing a Lot, acknowledges that there exists the possibility that American Bald Eagles or other endangered species may be present upon the Property, and that certain federal, state or local laws or regulations may regulate the construction of Improvements on a Lot as a result of the presence of any such endangered species. Each Owner acknowledges that he or she is solely responsible for determining whether any such laws or regulations may be applicable to his or her Lot, and shall comply with all such laws and regulations.

Section 34. Occupants Bound. All provisions of this Declaration, any Additional or Supplemental Declaration and the Bylaws and any and all rules and regulations, use restrictions or Guidelines promulgated pursuant hereto or thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

Section 35. Additional Shoreline Improvements Requirements. Duke Energy Corporation has prepared maps of the Lake and Lake shoreline which show areas of shoreline within the Project that Duke Energy Corporation (as Lake manager, under authority granted by FERC) has designated as "Environmental Areas" and "Impact Minimization Zones" ("IM

Zones”). If a Lot has an “Environmental Area” or “IM Zone” on and/or adjacent to it, the ability to develop and use the Lot may be affected, and the Owner may be required to obtain the permission of Duke Energy Corporation before undertaking certain development activities upon or constructing improvements on or adjacent to the Lot, as set forth below. All shoreline improvements must have written approval from the Habitat Review Board. All shoreline stabilization shall be performed by barge only and must have prior written approval from the Habitat Review Board.

(a) Environmental Areas. Environmental Areas are vegetated areas or cove heads with stream confluence located on them. Duke Energy Corporation restricts any construction (including, but not limited to, the construction or placement of piers and docks), and any related excavation or shoreline stabilization within these Environmental Areas in the following circumstances:

(i) if stable, emergent vegetation (minimum lakeward width of 5 feet) composes greater than 50% of the area between full pond elevation and a depth of five (5) feet from full pond for a minimum linear distance of 100 feet;

(ii) if intermittent or permanent streams enter the upper ends of shallow coves (with or without vegetation); and

(iii) for cove heads with a stream, but lacking emergent vegetation, the environmental classification extends fifty (50) feet from the edge of the intersection of the stream centerline or the sediment delta, when present, and the full pond contour.

To the best of Declarant’s knowledge, based on a review of the Duke Energy Corporation maps, it appears that portions of the shoreline on Lots 1, 2, 14, 19, 21, 29, 31 39 and 50 have been identified as Environmental Areas.

(b) Impact Minimization Zones. The maps prepared by Duke Energy Corporation also identify certain lands and waters within certain areas of the Project as Impact Minimization Zones (“IM Zones”). These IM Zones are areas that have specifically identified importance on the Lake from a scenic, environmental, or cultural standpoint. Protection of those important values does not necessarily preclude access to the Lake. To the best of Declarant’s knowledge, based on a review of the Duke Energy Corporation maps, portions of Lots 18, 19 and 24 contain IM Zones. The owners of Lots containing IM Zones must use efforts to avoid any disturbance of IM Zones, but if avoidance is not a practicable alternative, then the following specific Lake use restrictions will apply:

No boat ramps (except those required for public recreation) will be allowed within the boundaries of the IM Zones. No excavation and no stabilization will be allowed unless approved by all other governmental agencies having jurisdiction. Construction within these areas may also be subject to specific mitigation requirements imposed by the Federal, State or local resource agencies.

Section 36. Removal of Trees and Other Vegetation. All trees, shrubs and ground cover are considered to be “protected” vegetation in that cutting and clearing is not permitted

therein without the prior written consent of Declarant or the Habitat Review Board. Mechanized equipment will not be allowed in the Protected Lake Buffer.

Declarant hereby reserves the right and easement benefiting Declarant and the Association to go upon any Lot or other portion of the Property to replant or order the replanting of any trees, shrubs or other vegetation removed within the Project in violation of the terms of this Article VII, Section 36. Should Declarant or the Association exercise its easement rights pursuant to the terms of this Article VII, Section 36, the Owner of the nonconforming Lot shall reimburse Declarant or the Association (as applicable) within five (5) business days following the submission of an invoice for any costs or expenses incurred by Declarant or the Association. The exercise or nonexercise of the easement rights contained in this Article VII, Section 36 shall be subject to the discretion of the Declarant and the Association and neither Declarant, nor the Association shall have the obligation to exercise such rights.

Declarant and/or the Association shall have the authority but not the obligation, in their sole discretion, to assess penalties against an Owner who cuts, damages, or removes any trees, shrubs or other vegetation on any part of the Common Areas, its Lot or any other Lot or Common Area, contrary to the above provisions.

The penalties authorized by this Article VII, Section 36, as well as all related expenses to be reimbursed, shall be considered a Special Individual Assessment against the respective Owner's Lot, entitling the Association to the assessment collection remedies specified in Article VI of this Declaration.

Section 37. Catastrophic Loss of Vegetation. In circumstances of catastrophic events such as fire, insect infestation, and severe wind damage, native vegetation shall be allowed to regenerate naturally once dying, dead or diseased material is removed under the guidance of the Habitat Review Board. Management of natural regeneration shall be in accordance with procedures established by the Habitat Review Board.

Section 38. Building Construction and Quality. All buildings and outbuildings erected upon any Lot shall be constructed of material of good grade, quality and appearance and shall be constructed in a proper, workmanlike manner. No building shall be erected unless it is completely underpinned with a solid brick or brick, stone or stucco covered block foundation. The exterior surface of any building shall not be of asbestos shingle siding, imitation brick or stoneroll siding, or exposed concrete or cement blocks. The exterior surface of any garage, outbuilding or appurtenant structure or building erected on or located on any Lot shall be architecturally compatible with, and of material and construction comparable in cost and design to, the exterior surface of the dwelling located on said Lot. All buildings shall have roofs (with the exception of dormers, porches, bay windows and other minor architectural details) covered with slate, cedar shakes, or metal roofing. Tile, fiberglass shingles, or rolled roofing material may be permitted so long as it is approved by the Habitat Review Board in writing.

Section 39. Antennas; Satellite Dishes or Discs. Except as hereinafter provided, no radio or television transmission or reception towers, antenna, satellite dishes or discs shall be erected or maintained on any Lot. One (1) dish or disc not exceeding one (1) meter in diameter or diagonal measurement for receiving direct broadcast satellite service ("DBS") or multi-point



distribution services ("MDS") may be erected and maintained for each Dwelling Unit. No roof-mounted antenna, dishes or discs shall be permitted on any Lot if adequate broadcast reception can be obtained without mounting such equipment on the roof of the house; provided, however, that if such roof-mounted equipment is required, no antenna or related structures may be mounted on masts exceeding twelve (12) feet in height above the highest roof line ridge of the house. Any dish, disc, or antenna (with associated mast, if any) shall be reasonably camouflaged and screened from view from Lake James and the Roadways, and shall be located in the Required Building Envelope located on any Lot.

Section 40. Non-waiver. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision contained herein or referred to herein shall be held to be a waiver by that party of any right available to the party upon the recurrence or continuance of said violation or the occurrence of a different violation.

Section 41. Rights of Duke Energy Corporation. Duke Energy Corporation has certain privileges and easements affecting the Property which include the right, privilege and easement of backing, ponding, raising, flooding or diverting the waters of Lake James and its tributaries upon and over the Property, as more specifically described in the Deed from Duke Energy Corporation to Declarant's predecessor(s) in title.

## ARTICLE VIII

### ARCHITECTURAL AND LANDSCAPING CONTROL

Section 1. General. Notwithstanding anything contained in this Declaration to the contrary, no Improvements, including, without limitation, site preparation on any Lot, change in grade or slope of any Lot, or erection of buildings or exterior additions or alterations to any building situated upon the Property, erection of or changes or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot or in the Protected Lake Buffer (as defined in Section 3(b) of this Article VIII) or Restricted Zone, shall be commenced, erected or maintained on any portion of the Property, until: (a) the Habitat Review Board, appointed as hereinafter provided, has approved the plans and specifications therefor and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Guidelines (as defined in Section 3 of this Article VIII); (b) the fees set forth in or contemplated in this Article VIII have been paid. In addition to any standards established pursuant to this Declaration, Declarant may establish, by Supplemental Declarations or Additional Declarations, architectural and landscaping control standards, guidelines and restrictions in regard to various Phases or sections of the Property. Except as otherwise expressly provided herein, the provisions of this Article VIII shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant on any Lot or upon any of the Common Areas or Maintenance Areas.

The Board may delegate to the Habitat Review Board any powers or authority reserved or granted to the Board under this Article VIII.

Section 2. Composition of Habitat Review Board. So long as Declarant owns any Lot or other portion of the Property, the members of the Habitat Review Board shall be

appointed by Declarant in its sole discretion. At such time as Declarant no longer owns any Lot or other portion of the Property or at such earlier date as Declarant releases its right to appoint the members of the Habitat Review Board, the members of the Habitat Review Board shall thereafter be appointed by the Board. The members of the Habitat Review Board shall be appointed annually and will be composed of at least three (3) and not more than seven (7) individuals, the exact number of members of the Habitat Review Board to be designated from time to time by the body then having the authority to appoint such members (Declarant or the Board, as the case may be). The members of the Habitat Review Board need not be Owners of property in the Project. In the event of the death or resignation of any member of the Habitat Review Board, the party or body then having the authority to appoint members to the Habitat Review Board shall have full authority to designate and appoint a successor. Members of the Habitat Review Board may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members. Notwithstanding anything contained herein to the contrary, the Habitat Review Board shall have the right, power and authority to employ and/or use the services of any architects, engineers, attorneys or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Habitat Review Board as described in this Article VIII.

Section 3. Architectural, Landscape, and Lake Buffer Guidelines.

(a) The Habitat Review Board shall, from time to time, publish and promulgate architectural, design, landscape, and lake buffer guidelines (collectively, the "Guidelines"). The Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Habitat Review Board in reviewing plans and specifications for Improvements. The Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications to the Habitat Review Board and the fees to be imposed by the Habitat Review Board, as more specifically described in Article VIII, Section 7 hereof. In any event, the Guidelines shall not be binding upon the Habitat Review Board, may be revised and amended at any time by the Habitat Review Board, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials submitted to the Habitat Review Board for approval. Furthermore, the Habitat Review Board may publish and promulgate different Guidelines for different Phases, sections or portions of the Property.

(b) The Guidelines shall also be explanatory and illustrative of the general intent of the landscape development of the Property and are intended as a guide to assist the Habitat Review Board in reviewing plans and specifications for landscape Improvements. The Guidelines shall also set out, among other things, the following:

(i) The procedures for submission, review and approval of landscape plans and specifications to the Habitat Review Board and the fees to be imposed by the Habitat Review Board, as more specifically described in Article VIII, Section 7 hereof;

(ii) Standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including the removal of trees; and

(iii) With respect to any Waterfront Lot or Water Access Lot, standards, methods and procedures for landscaping, landscape management and landscape maintenance of any part of a Waterfront Lot or Water Access Lot that is within one hundred (100) feet of the waterside property line of the Lake (each, a "Protected Lake Buffer") and that is within one hundred ten (110) feet of the waterside property line of the Lake and ten (10) feet from the Protected Lake Buffer (the "Restricted Zone").

Such authorized standards, methods and procedures shall be utilized by Owners and their contractors and subcontractors, and the approval by the Habitat Review Board of any landscaping plan or other landscaping improvement in connection with landscaping on a Lot or other portion of the Property shall be based upon the conformity of such plan or improvement with the Guidelines.

(c) The Habitat Review Board is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and builders performing work or constructing or installing Improvements (including landscape Improvements) on the Property.

Section 4. Definition of "Improvements". The term "Improvement" or "Improvements" shall mean and include any and all man-made changes or additions to a Lot, including, but not limited to, the location, materials, size and design of all Dwelling Units and other buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; piers, docks and boatslips; roofed structures; parking areas; fences; "invisible" pet fencing; pet "runs," lines and similar tethers or enclosures; walls; irrigation equipment, apparatus and systems; landscaping (including cutting of trees); hedges; mass plantings; poles; driveways; ponds; lakes; changes in grade or slope; site preparation; swimming pools; hot tubs; jacuzzis; tennis courts; tree houses; basketball goals, skateboard ramps, and other sports or play apparatus; signs; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Habitat Review Board, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Habitat Review Board.

Section 5. Enforcement.

(a) It is Declarant's intent that the architectural control provisions of this Declaration and any Supplemental Declarations or Additional Declarations are to permit control of the architectural design and landscaping and to establish quality standards for construction and construction activity in the Project and to help preserve values of properties in the Project. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Project and to Declarant, and to the values of their respective properties in the Project, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this Article VIII by a proceeding at law or in equity

against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants unto the Habitat Review Board, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determination by the Habitat Review Board or the Board whether there exists any construction of any Improvement which violates the terms of any approval by the Habitat Review Board, the terms of the Guidelines, the terms of this Declaration or any Additional Declaration, or the terms of any amendments hereto or thereto.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved Improvements) if such Improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of the Guidelines, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the Association and/or the Habitat Review Board in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot or other portion of the Property upon which such Improvement was commenced or constructed.

Section 6. Variances. Upon submission of a written request for a variance, which request shall set forth, among other things, the extraordinary circumstances applicable to a Lot giving rise to the need for a variance, the Habitat Review Board may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Additional Declaration. In any case, however, the Habitat Review Board may grant a variance only due to the existence of extraordinary circumstances applicable to a Lot, which extraordinary circumstance (i) has not been caused by the Owner of such Lot and (ii) materially impairs the ability of an Owner to construct a Dwelling Unit on such Owner's Lot. Any variance granted shall be in basic conformity with and shall blend effectively with the general architectural style and design of the Project and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the Habitat Review Board has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the Habitat Review Board shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Habitat Review Board's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Additional Declaration against any other Owner. If a variance is granted, the Owner receiving such variance shall comply with the more restrictive of the terms of the variance or applicable local, state or federal laws (including, without limitation, local zoning and development laws), and the granting of a variance shall not relieve any Owner from the obligation of complying with such laws.

Section 7. Fees Required by the Habitat Review Board. The Habitat Review Board, in its sole discretion, may require that each Person submitting plans and specifications for Improvements to the Habitat Review Board pay one or more fees to the Habitat Review Board or to Declarant as a condition to commencement of construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established by, and may be increased from time to time by, the Habitat Review Board and shall be set forth in the Guidelines.

Section 8. No Construction Without Payment of Fees. Notwithstanding anything contained in this Article VIII to the contrary, plans and specifications for Improvements to be constructed on a Lot or other portion of the Property shall not be deemed to have been properly submitted unless and until any and all fees required by the Habitat Review Board to be paid in connection with such Improvements, as provided in Article VIII, Section 7 above, shall have been paid to the Habitat Review Board or Declarant as required.

Section 9. Notices and Submittals. Notices and submittals to the Habitat Review Board shall be in accordance with the notice provisions set forth from time to time in the Guidelines.

Section 10. Limitation of Liability. No member of the Habitat Review Board shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article VIII. Neither the Habitat Review Board, nor the members thereof, nor the Association, nor Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the Habitat Review Board shall not be deemed or construed as a representation or warranty of the Habitat Review Board, Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications; and any responsibility or liability therefor is hereby disclaimed. Every person who submits plans and specifications, and every Owner, agrees that he will not bring any action or suit against Declarant, the Association, the Habitat Review Board, the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 11. Miscellaneous. Members of the Habitat Review Board, in the sole discretion of the party or body appointing such members (*i.e.*, either Declarant or the Board, as the case may be) may be compensated for their services. The Association shall reimburse members of the Habitat Review Board for reasonable out-of-pocket expenses associated with their activities hereunder. All costs, expenses and attorneys' fees of the Habitat Review Board, including those incurred in connection with the exercise of their enforcement or other powers as provided herein, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, attorneys' fees and expenses in accordance with Article XII, Section 5 hereof.

## ARTICLE IX

### INSURANCE; REPAIR AND RESTORATION; CONDEMNATION

Section 1. Board of Directors. To the extent such insurance is reasonably available, the Board of Directors shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below:

(a) Property Insurance. All improvements and all fixtures and personal property included in the Common Areas and Maintenance Areas and all personal property and supplies belonging to the Association shall be insured in an amount equal to the current replacement cost (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board with the assistance of the insurance company providing coverage. The Board shall, at least annually, review the insurance coverage required herein to determine adequacy. Such coverage shall provide protection against loss or damage by fire or other hazards covered by a standard Special Form property policy including endorsements for windstorm and water damage, vandalism and malicious damage. In addition to the provisions and endorsements set forth in Article IX, Section 3 and Section 4, the property insurance described herein shall contain the following provisions:

- (1) standard "Agreed Amount" endorsements;
- (2) construction code endorsements if the Common Area becomes subject to a construction code provision which would require changes to undamaged portions of any building thereby imposing significant costs in the event of partial destruction of such building by an insured peril;
- (3) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and
- (4) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

The property insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or

assessments may be made against the Association or the Owners; (2) loss payments are contingent upon action by the carrier's directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners from collecting the proceeds.

(b) Commercial General Liability. The Board shall also be required to provide occurrence form commercial general liability insurance (ISO-1986 or broader) and officer's and director's liability insurance in such limits as the Board may, from time to time, determine to be customary for projects similar in construction, location and use as the Project, covering each member of the Board, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and Maintenance Areas, or from service on the Board; provided, with a limit of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board shall review such limits annually.

(c) Fidelity Coverage. The Board shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Other. Such other insurance coverages, including flood insurance and worker's compensation, as the Board shall determine from time to time desirable.

Section 2. Premium Expense. Premiums upon insurance policies purchased by the Board shall be paid by the Board and charged as a common expense to be collected from the Owners pursuant to the terms of this Declaration.

Section 3. Special Endorsements. The Board shall make diligent efforts to secure insurance policies that will provide for the following:

- (a) recognition of any insurance trust agreement entered into by the Association;
- (b) coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the named insured and any insurance trustee; and
- (c) coverage that cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association or any Owner.

Section 4. General Guidelines. All insurance policies purchased by the Board shall be with a company or companies licensed to do business in the State of North Carolina and

holding a rating of "A VIII" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Section 5. Insurance Proceeds. Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of casualty insurance covered by it to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area and/or Maintenance Areas.

Section 6. Insufficient Proceeds. If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

Section 7. Owner's Personal Property. Neither the Association nor Declarant shall be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his family, tenants, guests or invitees, located on or used at the Common Areas. Further, neither the Association nor Declarant shall be responsible or liable for any damage or loss to any personal property of any Owner, his family, tenants, guests or invitees located on or used at the Common Areas. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property. Neither the Association nor Declarant shall be responsible or liable for any damage or loss to or of any boat, its tackle, gear, equipment or other property located thereon, or any other personal property of any Owner, his family, tenants, guests or invitees located on or used at the Parking Area or other Common Areas, Maintenance Areas, or the Piers and Boatslips. Each Owner shall be solely responsible for all such boats and other personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase, at such Owner's sole cost and expense, of any liability or other insurance for damage to or loss of such property.

Section 8. No Obligation to Insure Owners' Property. By virtue of taking title to a Lot within the Project, each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or any Dwelling Unit or other property located thereon.

Section 9. Security. The Association may, in its sole discretion, but shall not be obligated to, provide certain security and fire protection measures, and maintain or support certain other activities within the Project designed to make the Project safer than it might otherwise be. Provided, however, should the Association provide, maintain or support any such



measures or activities, then neither the Association, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or fire protection within the Project, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason of failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner and Occupant of any Lot and each tenant, guest and invitee thereof acknowledges and understands that neither the Association, Declarant nor any successor of Declarant are insurers, and each such Owner, and Occupant of a Lot and their tenants, guests and invitees hereby assume all risks for loss or damage to persons, property or contents belonging to any such persons.

Section 10. Condemnation. Whenever all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for and on account of such taking shall be paid to the Association. The Association, acting through the Board, shall have the right to negotiate and litigate the issues with respect to the taking and compensation affecting its interest in the Common Area, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot or other portion of the Property, hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Area. All compensation and damages paid to the Association on account of such a taking shall be used to restore the Common Area, provided such restoration is possible, with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board, in its sole discretion. Nothing herein is to prevent Owners whose Lots or other property are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots or other property, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Common Area, Lots or other property without such allocation, the award shall be divided between affected Owners and the Board, as their interests may appear, by the Board in its sole discretion.

## ARTICLE X

### EASEMENTS AND OTHER RIGHTS

Declarant, in addition to any other easements granted or reserved herein, hereby reserves unto itself, its successors and assigns, and grants to the Association and any other persons or entities hereinafter set forth, the following non-exclusive easements on, upon, over, across, through and under the Property. In addition, Declarant hereby reserves unto itself, its successors and assigns, the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through and under the Common Areas and any portion of the Property owned by Declarant as deemed to be in the best interests of and proper for the Project, including, but not limited to, easements in favor of Declarant, the Association, the Owners, and all their family members, guests, invitees and tenants and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified.

Section 1. Easements and Cross-Easements on Common Areas. Declarant, for itself, its designees and the Association, reserves the right to impose upon the Common Areas henceforth and from time to time such easements and cross-easements for ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, master antenna transmission, surveillance services, governmental and quasi-governmental purposes, sewer, water, gas, drainage, irrigation, lake maintenance, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for, the Project or any portion thereof.

Section 2. Use of Common Areas. Subject to any limitation or restriction set forth in this Declaration, Declarant declares that the Common Areas are subject to a perpetual nonexclusive easement in favor of Declarant, the Association and their designees, the Owners and all their family members, guests, invitees and tenants, and appropriate governmental and quasi-governmental agencies to use the Common Areas for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Declaration and any Supplemental Declarations or Additional Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Area, any conveyance or encumbrance of such area is subject to this easement.

Section 3. Right-of-Way Over Roadways. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, tenants, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, tenants, guests, invitees, successors and assigns, and to each Occupant of a Lot, and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Property while engaged in their respective functions, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Roadways for the purpose of providing access, ingress and egress to and from, through and between the Property. Furthermore, the Roadways and rights-of-way may be used for the furnishing of utilities services to the Lots and the Dwelling Units thereon, provided that any such use (other than water and sewer services which are permitted hereunder) must be approved by the Board, and by Declarant as long as Declarant owns any portion of the Property.

Section 4. Right of the Association and Declarant to Enter Upon the Common Areas and Maintenance Areas. Declarant hereby reserves for the benefit of itself, its successors in interest and assigns, and grants to the Association and all agents, employees or other designees of Declarant or the Association an easement for ingress, egress and access to enter upon or over the Common Areas and Maintenance Areas for the purposes of inspecting any construction, proposed construction, or Improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Association, as appropriate. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas and Maintenance Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter redesignated or as Declarant otherwise determines them to be reasonably suited. Notwithstanding the foregoing, nothing contained herein shall be interpreted

as imposing any obligation upon the Association or Declarant to maintain, repair, or construct Improvements which an Owner is required to maintain, construct or repair.

Section 5. Easement for Encroachments. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, the Owners, their successors and assigns, and to the Occupants of Lots, easements for encroachments, to the extent necessary, in the event any portion of the Improvements located on any portion of the Property now or hereafter encroaches upon any of the remaining portions of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching Improvements in favor of Declarant, the Association, the Owners and all their designees.

Section 6. Easements Regarding Trail System. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, tenants, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, tenants, guests, invitees, successors and assigns, and to each Occupant of a Lot, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and non-motorized vehicular; over and across any and all hard surface or soft surface trails, biking, walking or jogging paths, or similar pathways located upon those portions of the Property designated by Declarant as part of a system of hard surface or soft surface trails, biking, walking or jogging paths within the Property, including those trails shown as "Trail Easement" or by similar designation on the Plats (collectively, the "Trail System").

Section 7. Maintenance Areas. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, its successors and assigns, the following nonexclusive perpetual easements over certain areas of the Property as hereinafter described for the purposes hereinafter described:

(i) Easements for the installation, maintenance, repair and removal of landscaping and landscaping amenities, including signage, lighting, monuments and irrigation systems, over, across and under those portions of the Property shown and designated as "Landscape Easements" or by similar designation on the Plats (herein referred to as "Landscape Easements").

(ii) Easements for the installation, maintenance, repair and removal of hard surface or soft surfaces trails, walking or jogging paths, or similar pathways over, across and under those portions of the Property being part of the Trail System.

(iii) Easements over the Piers and Boatslips for the performance of the maintenance thereof as set forth herein.

All of the above-described areas and items shall herein be referred to as the "Maintenance Areas." The Association shall maintain the Maintenance Areas to a "camp" appearance in keeping with the rustic nature of the Project.

Section 8. Easements for Private Driveways. Declarant hereby reserves, for the benefit of itself, its agents, employees, designees, successors and assigns, and grants to the Association, its agents, employees, designees, successors and assigns, and to the Owners of Lots 1, 2, 3, 8, 13, and 31, their family members, guests, invitees, successors and assigns, a perpetual, non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Common Area, twenty five (25) feet in width, identified on the Plat as "25' Driveway Easement" for the purpose of providing utility services, access, ingress, and egress to and from such Lots from the Roadways. Such easements shall be subject to the right of the Association to enter onto the Private Driveway Easements as reasonably necessary to perform its obligations to maintain the Common Area, and to repair and maintain the Private Driveways, if the Association elects to repair and maintain the Private Driveways as provided below. Each of the Private Driveways shall be maintained and periodically repaired as needed by the Owners of the Lot(s) who are benefited by the applicable Private Driveway Easement. The Association shall have the option to repair and maintain any Private Driveway which has not been maintained and repaired by the responsible Lot Owner(s). The costs of any such repair and maintenance shall be a Special Individual Assessment against such Lot(s).

Section 9. Utility and Drainage Easements. The Property shall be subject to all easements and rights-of-way for utilities and drainage shown on the Plats, including, but not limited to, those certain easements shown and designated on the Plats as:

- (a) "Utility Easement"; and
- (b) "Public Storm Drainage Easement."

Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Association, its successors and assigns, and include, without limitation, storm drainage easements of variable width, whether or not depicted on a Plat, over the entire area within all ditches along any Roadway.

Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, a non-exclusive easement and right-of-way over, under and along (a) a ten (10) feet-wide strip of land adjacent to the front, side and rear boundary lines of all Lots within the Property (except that, with respect to any Lot fronting on the Lake there shall be no such easement along the portion of such Lot fronting on the Lake) and (b) all Landscape Easements, for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service, cable service, water, irrigation, Septic System, sanitary sewer and drainage facilities, storm drainage and/or other utilities. Within the above-described easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Habitat Review Board, over such easements.

Section 10. Irrigation Easements. Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, non-exclusive perpetual easements over, across and under those portions of the Property shown and

designated as "Irrigation Easement" on the Plats for the installation, maintenance, repair and removal of irrigation systems to service the landscaping to be installed and maintained in the Landscape Easement areas (herein referred to as the "Irrigation Easements"). Within the Irrigation Easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, repair and maintenance of irrigation systems. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Habitat Review Board, over such easements.

Section 11. Declarant's Right to Assign Easements, Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Property pursuant hereto, including any Improvements in such areas, which are not to be maintained by the Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot or other portion of the Property, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Notwithstanding the above, the Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Lot.

Section 12. Easement Reserved for the Association and Declarant. Full rights of access, ingress and egress are hereby reserved by Declarant for itself and the Association at all times over and upon any Lot or other portion of the Property for the exercise of the easement rights described in this Article X and for the carrying out by Declarant or the Association of the rights, functions, duties and obligations of each hereunder; provided, that any such entry by Declarant or the Association upon any Lot or portion of the Property shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage caused as a result of the gross negligence of Declarant, the Association or their employees or agents shall be repaired by Declarant or the Association, as the case may be, at the expense of Declarant or the Association, as the case may be.

Section 13. Additional Easements; Entrance Monument Easement. Declarant shall have the right to grant over, under, across and upon any portion of the Property owned by Declarant, and the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Common Areas, such easements, rights-of-way, licenses and other rights in accordance with or to supplement the provisions of this Declaration or as may otherwise be desirable for the development of the Project, by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. Such easements may be for the use and benefit of persons who are not Association Members or Owners. After such time as the members of the Board are no longer appointed by Declarant, the Board shall cooperate with Declarant and execute such grants of easements over the Common Areas as may be desirable to Declarant for the development of the Project and the preservation and enhancement of Declarant's interest therein. Declarant hereby grants, establishes and reserves, for the benefit of Declarant and the Association, and their successors and assigns, non-exclusive perpetual easements (the "Entrance Monument Easements") for the purpose of landscaping and maintaining the entryways and erecting and maintaining the Entrance

Monuments, if any, over such portions of the Subdivision identified as "Entrance Monument Easement" or "SE" or "Sign Easement" or by similar designation on the Map and all other portions of the Property upon which the Entrance Monuments, if any, and related facilities are located. "Entrance Monuments" shall include the Entrance Monument, if any, constructed or to be constructed by Declarant on the Common Area at on the Property.

Declarant or the Association shall have the right to enter, landscape and maintain the Entrance Monument Easements as entryways to the Subdivision. Further, Declarant or the Association may erect and maintain one or more stone monuments, with entrance signs thereon (the "Entrance Signs") bearing the name of the Subdivision and Declarant, which Entrance Signs, if any, shall be built to the applicable governmental standards for signs; and may erect and maintain lighting for the Entrance Sign, planters and other improvements typically used for an entryway.

Section 14. No Merger of Easements. The easements hereby established shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

## ARTICLE XI

### LAND STEWARDSHIP FEE.

Section 1. Land Stewardship Fee. As provided in the Master Declaration, all Lots sold in the Project will be subject to payment of a fee (the "Land Stewardship Fee"), which will be 0.5% of the gross sales price for the Lot (including any and all improvements thereon). The Land Stewardship Fee will commence with the first Lot sale by Declarant, and that sale and each subsequent transfer will be subject to the Land Stewardship Fee. The Land Stewardship Fee shall be payable to the Master Association upon the closing of the sale of the Lot. Fifty percent (50%) of the Land Stewardship Fee will be paid by the Master Association to a fund controlled by the Recreational Facilities Declarant for the marketing and maintenance of the Master Association, the Project, the Camp Lake James Tract and the recreational amenity located thereon, and the other Lake James communities developed by Crescent and other Affiliates, and environmental monitoring and enforcing with respect to the Camp Lake James Tract and the recreational amenity located thereon, and the other Lake James communities developed by Crescent and other Affiliates, and fifty percent (50%) will be paid by the Master Association to charitable organizations to be used as designated by Declarant for charitable and educational purposes, such as, by way of example and not limitation, community outreach and land stewardship.

## ARTICLE XII

### GENERAL PROVISIONS

Section 1. Duty of Maintenance. Except for those portions, if any, of a Lot which the Association may be obligated to or may elect to maintain or repair hereunder, the Owner of any Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot(s) owned by such Owner, including Improvements thereon and ground and drainage

easements or other rights-of-way incident thereto, in compliance with the covenants, conditions, restrictions and development standards contained in this Declaration (to the extent applicable), and in any applicable Supplemental Declaration or Additional Declaration, in accordance with the provisions of the Guidelines, and in a well-maintained, safe, clean and attractive condition at all times. Such maintenance, as to unimproved and improved Lots, shall include, but shall not be limited to, the following:

- (1) Prompt removal of all litter, trash, refuse and waste;
- (2) Keeping land, including any lawns and shrub beds, well maintained and free of trash, uncut grass and weeds;
- (3) Keeping all sediment resulting from land disturbance or construction confined to the respective Owner's property; and
- (4) Complying with all governmental health and police requirements.

In addition, such maintenance, as to improved Lots, shall include, but shall not be limited to, the following:

- (1) Lawn mowing on a regular basis;
- (2) Tree and shrub pruning;
- (3) Watering by means of a lawn sprinkler system and/or hand watering as needed;
- (4) Keeping exterior lighting and mechanical facilities in working order;
- (5) Keeping lawn and garden areas alive;
- (6) Removing and replacing any dead plant material;
- (7) Maintenance of natural areas and landscaping in accordance with the Guidelines;
- (8) Keeping parking areas and driveways in good repair; Repainting of Improvements; and
- (10) Repair of damage and deterioration to Improvements, it being understood and agreed that if any Improvements are damaged or destroyed by fire or other casualty, then within six (6) months following the date such damage or destruction occurs, the Owner of the Lot on which such Improvements are situated, must repair and restore such damaged Improvements (in accordance with plans and specifications approved by the Habitat Review Board and otherwise in accordance with the terms and provisions of this Declaration and of each Additional Declaration applicable thereto) or remove such damaged Improvements and restore the Lot to its condition existing prior to the construction of such Improvements.

In addition to the foregoing, each Owner must maintain, in accordance with the terms hereof, any Common Area and/or Maintenance Area located within the boundaries of its Lot, to

the extent such Common Area and/or Maintenance Area is not maintained by the Association as provided in this Declaration.

Notwithstanding anything contained herein to the contrary, the above-described maintenance responsibilities as to any Lot shall commence only upon a Plat showing such Lot being recorded in the Office(s) of the Register of Deeds of McDowell County and upon the conveyance of such Lot by Declarant. If an Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth herein, then the Board and Declarant, either jointly or severally, may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner as described in herein. Provided, however, this cure period shall be extended for a time not to exceed sixty (60) days so long as Owner shall have commenced to cure such nonconformity and shall diligently prosecute the same. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, or Declarant (so long as it owns any portion of the Property), acting through its authorized agent or agents, either jointly or severally, shall have the right and power to enter onto the premises of such Owner and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owner of the 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 Declarant in performing such work computed at the rate of sixteen percent (16%) per annum from the date(s) such amounts are expended until repayment to the Association or Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and such Owner shall reimburse the Association or Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). If such Owner shall fail to reimburse the Association or Declarant, as the case may be, within thirty (30) days after the mailing to such Owner of a statement for such costs and expenses, then, without limitation of any other rights of the Association or Declarant, the Association may impose a Special Individual Assessment against such Owner.

Section 2. Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein, as the same may be amended in accordance with Article XII, Section 2 below, shall run with and bind the Property and any Owner, and shall inure to the benefit of every Owner of a Lot in the Property and every Owner of any other portion of the Property, including Declarant, and their respective heirs, successors, and assigns, for a term of thirty (30) years beginning on the date this Declaration is recorded in the Offices of the Register of Deeds of McDowell County, North Carolina. At the end of such thirty (30) year period, the easements, covenants, conditions and restrictions set forth herein shall automatically be extended for successive period(s) of ten (10) additional years, unless prior to the expiration of a respective period, by two-thirds (2/3) vote of the Association Members, there shall be adopted a resolution to terminate these covenants and restrictions. Owners may vote in person or by proxy at a meeting duly called for such purpose at which a quorum is present, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such meeting, which notice shall set forth the purpose of such meeting. The foregoing shall not limit the right



of Declarant or the Association Members to at any time amend and/or supersede, in whole or in part, the terms and provisions hereof, as such right in favor of Declarant and the Association Members is described in Article XII, Section 3 below.

Section 3. Amendment. Except as otherwise expressly provided herein and subject to the limitations hereinafter contained, this Declaration may be amended or modified at any time by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. Provided, however, if sixty-seven percent (67%) of all votes entitled to be cast by the Association Members cannot be obtained at such a meeting, then this Declaration may be amended by obtaining the vote of sixty-seven percent (67%) of all votes present at a duly held meeting of the Association Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Association Members holding a sufficient number of votes to comprise, along with such voting Association Members, a total of sixty-seven percent (67%) of all votes entitled to be cast by Association Members. Further provided, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Association Members is required pursuant to this Article XII, Section 3 shall become effective when an instrument executed by the Association Members voting for such amendment or modification is filed of record in the Offices of the Register of Deeds of McDowell County, North Carolina; provided, however, such an amendment or modification, in lieu of being executed by the Association Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Association Members, as provided in this Article XII, Section 3.

Notwithstanding the terms of the immediately preceding paragraph of this Article XII, Section 3, for a period of ten (10) years after the recordation of this Declaration, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provision of this Declaration provided that such amendments or modifications are consistent with the scheme of development of the Project as described herein and in the Master Declaration, and do not substantially and adversely affect the rights of any Owner. Furthermore, at any time during the term of this Declaration, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto (i) which are correctional in nature and do not involve a change which materially adversely affects the rights, duties or obligations specified herein, (ii) which are necessary to cause this Declaration or any Additional Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association or other governmental agency, and (iii) to change the location of any Pier Zone or designation of any Lot (including Waterfront Lots and Water Access Lots) then owned by Declarant, or, if not then owned by Declarant, with the consent of the Owner of such Lot. Any amendment to this Declaration by Declarant need only be executed by Declarant, and shall

be effective when so executed and recorded in the Offices of the Register of Deeds of McDowell County, North Carolina.

Section 4. Release of Property. For a period of ten (10) years after the recordation of this Declaration, Declarant shall have the right, in its sole and absolute discretion, without the consent of the Association, any Association Member or any other Owner, to release any portion of the Property then owned by Declarant from the terms of this Declaration by recording a release in the Office of the Register of Deeds of McDowell County, North Carolina. After the recordation of such release, the portion of the Property described therein shall not be subject to the terms of this Declaration.

Section 5. Enforcement; Litigation. The Association, Declarant or any Owner shall have the right, but not the obligation, on its own behalf or on behalf of others, to enforce the provisions of this Declaration or any Additional Declaration. Enforcement of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by a proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charge or lien, either to restrain such violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association, Declarant or any Owner to enforce any such control, covenant, condition, restriction, easement, development guideline, charge or lien shall in no event be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof. Except as otherwise expressly provided in this Declaration, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Class I Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. The immediately preceding sentence shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration, (b) the imposition and collection of assessments, charges or other fees hereunder, (c) proceedings involving challenges to ad valorem taxation, (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services to the Project.

Section 6. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 7. Notice. Except as otherwise set forth herein expressly, whenever written notice to an Owner or Association Member (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner or Association Member appearing on the records of Declarant or the Association. If notice is given

in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. Declarant's address as of the date of recording of this Declaration is P.O. Box 1003, Charlotte, North Carolina 28201-1003.

Section 8. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 9. No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use of such Owner's Lot(s) or other property located within the Project or the Common Area.

Section 10. Changes to Plans for the Project. Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the development of the Project, and Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration, reserves the right to change any plans for the Project at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions, and any plans for the Project shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof. In addition, Declarant reserves the right to change, from time to time, the uses and densities that exist on any portion(s) of the Property owned by Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first above written.

OLD WILDLIFE CLUB, LLC, a Delaware limited liability company

By: [Signature]  
Name: M. Troy Lucas aka Michael Troy Lucas  
Title: Vice President

Burke County, North Carolina

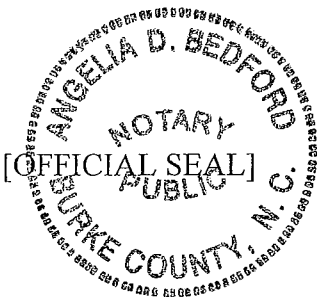
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

M. Troy Lucas aka Michael Troy Lucas, Vice President  
Name of principal(s)

Date: 8-7-06

[Signature]  
Official Signature of Notary Public

Angelic D. Bedford, Notary Public  
Notary printed or typed name



My commission expires: 3-5-2011

ARTICLES OF INCORPORATION

OF

OLD WILDLIFE CLUB PROPERTY OWNERS ASSOCIATION, INC.

A Nonprofit Corporation

The undersigned incorporator hereby forms a nonprofit corporation (the "Corporation") under the laws of the State of North Carolina, as contained in §55A-2-02 of Chapter 55A of the General Statutes of North Carolina entitled the "North Carolina Nonprofit Corporation Act" (the "Act"), and to that end hereby sets forth:

1. The name of the Corporation is "Old Wildlife Club Property Owners Association, Inc."

2. The street address and county of principal office of the Corporation are Wachovia Building, 400 South Tryon Street, 13th Floor, Charlotte, Mecklenburg County, North Carolina 28202. The street address and county of the initial registered office of the Corporation are 325 Hillsborough Street, Raleigh, Wake County, North Carolina 27603, and the name of the initial registered agent of the Corporation at such office is CT Corporation System. The mailing address of the initial registered office of the Corporation is the same as the street address.

3. The name and address of the incorporator are Julianne Fink, Kennedy Covington Lobdell & Hickman, L.L.P, 4350 Lassiter at North Hills Avenue, Suite 300, Raleigh, North Carolina 27619.

4. The Corporation shall have members, divided into such classes, and with such designations, qualifications, rights and obligations, as shall be set forth in the Bylaws.

5. The purposes for which the Corporation is organized are:

(a) To carry on one or more exempt functions of a homeowners association under the Internal Revenue Code of 1986, as amended (the "Code"), including those activities related to the acquisition, construction, management, maintenance, and care of "association property" (as defined in Section 528(c)(4) of the Code), all pursuant to such rules and policies as shall be set forth in its Bylaws; and

(b) To do such other acts and things, and engage in any lawful act or activity, for which corporations may be organized under, and as are authorized and permitted by, the Act and to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Corporation is organized;

provided, however, that in all events and circumstances, no part of any net earnings of the Corporation shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of association property, and other than by a rebate of excess membership

dues, fees, or assessments) to the benefit of any member of the Corporation or to the benefit of any private shareholder or individual (as defined in accordance with Treasury Regulations Section 1.528-7 promulgated under the Code), the Corporation being organized to provide, among other things, for the acquisition, construction, management, maintenance, and care of association property.

6. Notwithstanding anything to the contrary set forth herein, in the event of a dissolution and/or liquidation of the Corporation, all of the residual assets of the Corporation shall be distributed to the Members in proportion to the assessments collected from the Members.

7. To the fullest extent permitted by applicable law, no director of the Corporation shall have any personal liability arising out of any action whether by or in the right of the Corporation or otherwise for monetary damages for breach of any duty as a director. This Article shall not impair any right to indemnity from the Corporation that any director may now or hereafter have. Any repeal or modification of this Article shall be prospective only and shall not adversely affect any limitation hereunder on the personal liability of a director with respect to acts or omissions occurring prior to such repeal or modification.

8. The number of directors of the Corporation shall be fixed by the Bylaws. The number of directors constituting the initial Board of Directors shall be three (3) and the names and addresses of the persons who are to serve as directors until their successors are duly elected and qualified are:

M. Troy Lucas  
Wachovia Building  
400 South Tryon Street, 13th Floor (P.O. Box 1003)  
Charlotte, North Carolina 28202-1003

William D. Yeager  
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Andy S. Ferrell  
Wachovia Building  
400 South Tryon Street, 13th Floor (P.O. Box 1003)  
Charlotte, North Carolina 28202-1003

IN WITNESS WHEREOF, the incorporator has executed these Articles of Incorporation,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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Julianne Fink, Incorporator

**BYLAWS**

**OF**

**OLD WILDLIFE CLUB PROPERTY OWNERS ASSOCIATION, INC.**

ARTICLE I

NAME AND LOCATION

Section 1 Name. The name of the corporation is Old Wildlife Club Property Owners Association, Inc. (the "Association").

Section 2. Location. The principal office of the Association shall be located in Mecklenburg or McDowell County, North Carolina. The registered office of the Association may be, but need not be, identical with the principal office.

ARTICLE II

DEFINITIONS

All capitalized terms when used in these By-Laws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for Old Wildlife Club entered into by Old Wildlife Club, LLC, and duly recorded in the Office of the Register of Deeds for McDowell County, North Carolina (hereinafter referred to as the "Declaration").

ARTICLE III

MEETINGS OF ASSOCIATION MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Association Members shall be held at a date and time determined by the Board in its discretion, upon not less than ten (10) nor more than sixty (60) days' prior notice to the Association Members, and each subsequent regular annual meeting of the Association Members shall be held on the anniversary of such date each year thereafter, provided, however, the Board shall have the right, upon not less than ten (10) nor more than sixty (60) days' prior notice to the Association Members, to change the month, date and time of any annual meeting. If the day for the annual meeting of the Association Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Association Members may be called at any time by (a) the President or by the Board or (b) by the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at a proposed special meeting upon the delivery to the Association's Secretary of one or more signed and dated



written demands describing the purpose or purposes for which it is to be held. Any such special meeting called by the Association Members in the manner described in (b) above shall be held within thirty (30) days after the delivery of such written demand by the holders of at least ten percent (10%) of the votes entitled to be cast at such meeting.

Section 3. Place of Meetings. All meetings of the Association Members shall be held at such place, within Mecklenburg, or McDowell County, North Carolina, as shall be determined by the Board.

Section 4. Notice of Meetings. Written notice of each meeting of the Association Members shall be given by, or at the direction of, the Association's Secretary or other person authorized to call the meeting, by first class, registered or certified mail, or such other method allowed by the non-profit corporation laws or the Planned Community Act not less than ten (10) days nor more than sixty (60) days before the date of such meeting to each Association Member entitled to vote thereat, addressed to the Association Member's address last appearing on the books of the Association, or supplied by such Association Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, and any proposal to remove a director or officer.

Section 5. Membership in the Association. Each and every Owner of a Lot shall automatically become and be an Association Member. In addition, for so long as Declarant owns any part of the Property, Declarant shall be an Association Member.

Section 6. Classes of Voting Right. The Association shall have three (3) classes of voting membership:

Class I. The Class I Association Members shall be all Association Members with the exception of Declarant, and the Recreational Facilities Declarant. Class I Association Members shall be entitled to one (1) vote for each Lot owned by such Association Member. When more than one Person owns an interest (other than a leasehold or security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class II. The Class II Association Member shall be Declarant. The Class II Association Member shall be entitled to ten (10) votes for each Lot owned by Declarant. Notwithstanding anything contained herein to the contrary, the Class II Association Membership shall be perpetual unless terminated by written termination executed by the Declarant. If the Declarant ever terminates the Class II Association Membership, the Declarant shall thereafter hold a Class I Association Membership for each Lot and Future Development Lot it owns.

Class III. The Class III Association Member shall be the Recreational Facilities Declarant as owner of the Future Development Lot and any other portion of the Property hereafter designated as a Future Development Lot or a Lot, at such time as the Future Development Lot and any other portion of the Property hereafter designated as a Future Development Lot is subjected to this Declaration. The Class III Association Member shall have

ten (10) votes for each Future Development Lot and other Lot owned by the Recreational Facilities Declarant that is subject to this Declaration. Notwithstanding anything contained herein to the contrary, the Class III Association Membership shall be perpetual unless terminated by written termination executed by the Recreational Facilities Declarant. If the Recreational Facilities Declarant ever terminates the Class III Association Membership, the Recreational Facilities Declarant shall thereafter hold a Class I Association Membership for each Lot and Future Development Lot it owns.

Section 7. Quorum and Voting. The presence at the meeting of Association Members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes entitled to be cast by all classes of the Association Members shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws; if, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Proxies. At all meetings of Association Members, each Association Member may vote in person or by proxy. All proxies shall be in writing and filed with the Association's Secretary. Every proxy shall be revocable.

Section 9. Action by Association Members. During the Period of Declarant Control, the Board shall have the sole and exclusive authority to exercise all powers and rights of and to act in all instances on behalf of the Association, and the Members shall have no authority to exercise such powers or rights or to act by exercise of their votes, except as may be determined by the Board in its discretion, and except as provided with respect to the commencement of judicial or administrative proceedings as provided in Article XII, Section 5, of the Declaration, the levying of special assessments as provided in Article V, Section 4 of the Declaration and those acts that the Planned Community Act or other applicable laws provide may not be undertaken unilaterally by the Board, such as, to the extent required, ratification of the budget as provided in Article V, Section 3 of the Declaration, amendment of this Declaration as provided in Article XII, Section 3 of the Declaration, borrowing of funds to pay operational costs of the Association as provided in Article VI, Section (e) of these Bylaws and conveyance by the Association of fee simple title to all or any part of the Common Elements as provided in Article VI, Section (t) of these Bylaws.

Except as may be otherwise specifically set forth in the Declaration, the Articles or these Bylaws, and after the Period of Declarant Control, the vote of a majority of all votes entitled to be cast by all classes of the Association Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be the act of the Association Members. Notwithstanding the above and except as otherwise expressly provided in the Declaration, no judicial or administrative proceeding (including without limitation any judicial or administrative proceeding against any Declarant) shall be commenced or prosecuted by the Recreational Association unless approved by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Class I Association Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws. The immediately preceding sentence shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Declaration, (b) the imposition and collection of assessments, charges or other fees hereunder, (c) proceedings involving challenges to ad valorem

taxation, (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services to the Property.

Section 10. Waiver of Notice. Any Association Member may, at any time, waive notice of any meeting of the Association Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by an Association Member at any meeting of the Association Members shall constitute a waiver of notice by him of the time and place thereof except where an Association Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Association Members are present at any meeting of the Association Members, no notice shall be required and any business may be transacted at such meeting.

Section 11. Informal Action by Association Members. Any action which may be taken at a meeting of the Association Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Association Members who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

Section 12. Robert's Rules of Order. Meetings of the Members shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

#### ARTICLE IV

#### BOARD OF DIRECTORS

Section 1. Number and Appointment. The business and affairs of the Association shall be managed by a Board of three (3) directors who are appointed by Declarant during the Period of Declarant Control, and by a Board of at least five (5) directors elected by the Members as provided by these Bylaws thereafter. The directors need not be Members. Notwithstanding anything contained herein to the contrary, the Declarant shall at all times be entitled to appoint and remove the members of the Board and the officers of the Association during the Period of Declarant Control, which begins on the date that the Association is incorporated and ends at such time as Declarant no longer owns any portion of the Property (whether a Lot, Future Development Lot, or Common Area), or at such earlier time as Declarant terminates such right by execution of a written instrument of termination; provided, however, if not sooner ending or terminated, the Period of Declarant Control shall end on December 31, 2026. After the Period of Declarant Control, the Members shall, elect a Board of at least five (5) directors as provided by these Bylaws.

Section 2. Initial Directors. The initial directors shall be appointed by the Declarant. Such initial directors shall serve from the date upon which the Declaration is recorded in the Office of the Register of Deeds of McDowell County, North Carolina, until such time as their successors are duly appointed or elected and qualified.

Section 3. Nomination. Subject to Section 1 of this Article IV and after the Period of Declarant Control, nominations for the first election of directors on the Board shall be made from the floor at a meeting of the Association Members. After such first election of directors,

nominations for election to the Board shall be made by a Nominating Committee. Subject to Section 1 of this Article IV and after the Period of Declarant Control, nominations may also be made from the floor at the annual meeting. Subject to Section 1 of this Article IV and after the Period of Declarant Control, the Nominating Committee shall consist of a Chairman, who shall be an Association Member or a member of the Board, and two (2) or more Association Members. The Nominating Committee shall be appointed by the Board prior to the annual meeting following the first election of directors and each annual meeting of the Association Members thereafter, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 4. Election. Except as otherwise provided in this Article, including Section 1 hereof and after the Period of Declarant Control, directors shall be elected at the annual meeting of the Association Members and said election shall be by written ballot. At such election, the Association Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles, these Bylaws and the Declaration. Cumulative voting is not permitted.

Section 5. Term of Office. Each director shall hold office for the term for which he was appointed or elected, or until his death, resignation, retirement, removal, disqualification or until his successor is appointed or elected and qualified. Subject to Section 1 of this Article IV and after the Period of Declarant Control, at the first election of directors, the Association Members shall elect one (1) member of the Board for a term of three (3) years, who shall be the person receiving the largest number of votes, two (2) members of the Board for a term of two (2) years, who shall be the people receiving the second and third largest number of votes, and two (2) members of the Board for a term of one (1) year, who shall be the people receiving the fourth and fifth largest number of votes. At all annual elections thereafter but subject to Section 1 of this Article IV, director(s) shall be elected by the Association Members to succeed the director(s) whose term(s) then expire(s), and thereafter each director's term shall be three (3) years. Nothing herein contained shall be construed to prevent the election of a director to succeed himself. Votes shall be tallied at the meeting where they are so cast and, in the event of a tie vote, a run-off election shall be conducted at the same meeting.

Section 6. Removal. Subject to Section 1 of this Article IV and after the Period of Declarant Control, any newly elected director may be removed from the Board, with or without cause, by a majority vote of the Association Members. In the event of the death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. The Association Members may elect a director at any time to fill any vacancy not filled by the directors or, if applicable, not appointed by the Declarant.

Section 7. Compensation. No director shall receive compensation for any service he or she may render to the Association; however, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

Section 8. Member Attendance at Board Meetings. At regular intervals, the Board shall provide Members an opportunity to attend a portion of a Board meeting and to speak to the Board about their issues and concerns. The Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

Section 9. Robert's Rules of Order. Meetings of the Board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

## ARTICLE V

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Meetings of the Board shall be held on a regular basis as often as the Board sees fit on such days and at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal Action by Directors. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to such action is signed by all of the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5. Chairman. A Chairman of the Board shall be elected by the directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board and serve until a new President is elected.

Section 6. Participation by Conference Telephone. Any one or more directors may participate in a meeting of the Board by means of a conference telephone or similar communications device that allows all directors participating in the meeting to simultaneously hear each other during the meeting, and such participation in a meeting shall be deemed presence in person at such meeting.

## POWERS OF THE BOARD

The Board, for the mutual benefit of the Association Members and the Owners., shall have the following specific powers and rights (without limitation of other powers and rights the Board may have):

(a) To enter into agreements with the appropriate governmental authorities to enable the Association to improve and maintain the Common Areas and Maintenance Areas or portions thereof;

(b) To make reasonable rules and regulations for the use and operation of the Common Areas and Maintenance Areas, and to amend them from time to time;

(c) To enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Common Areas and Maintenance Areas and/or the Association;

(d) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas, Maintenance Areas and/or the Association;

(e) Subject to the affirmative vote of no less than a majority of all votes present, in person or by proxy, at a duly held meeting of the Association Members at which a quorum is present, all in accordance with these Bylaws, to borrow funds to pay costs of operation of the Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Association Members see fit; provided; however, until such time as Declarant no longer owns any portion of the Property, the Board may not mortgage any portion of the Common Area without the prior written approval of Declarant;

(f) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(g) To the extent permitted in Article XII, Section 5 of the Declaration and these Bylaws, to sue or defend in any court of law on behalf of the Association;

(h) To levy assessments in accordance with the provisions of the Declaration;

(i) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property of the Association and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;

(j) To exercise for the Association all powers, duties and authority vested in or delegated by the Declaration, these Bylaws, or the Articles to the Association and not reserved to the Association Members or Declarant by other provisions of the Declaration, these Bylaws or the Articles;

- (k) To declare the office of a member of the Board to be vacant in the event such member shall be absent, without the consent of the Board, from three (3) consecutive regular meetings of the Board;
- (l) To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;
- (m) To enter into agreements or contracts with builders regarding the construction of Improvements on Lots located in the Project;
- (n) To retain the services of legal and accounting firms;
- (o) To cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;
- (p) To the extent permitted in the Declaration and these Bylaws, to enforce the provisions of the Declaration and any Additional or Supplementary Declaration and any rules made thereunder or hereunder and to enjoin and/or, at its discretion, seek damages or other relief and levy fines for violation of such provisions or rules and/or by Special Individual Assessments against any Owner for violation of such provisions or rules pursuant to the provisions of the Declaration;
- (q) To contract with any third party or any Association Member (including, without limitation, Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms of the Declaration and these Bylaws, upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association;
- (r) To employ or retain the services of professional architects or other Persons to serve on or advise the Habitat Review Board;
- (s) To grant all necessary easements and rights-of-way over and across the Common Areas when in its sole discretion it deems such an action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sewerage and other utilities and drainage facilities; easements for ingress and egress in favor of adjoining property owners, provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;
- (t) Subject to the requirements of North Carolina General Statutes § 47F-3-112, to convey fee simple title to all or any part of the Common Area when in its sole discretion it deems such an action to be necessary and appropriate; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not convey any portion of the Common Area without the prior written approval of Declarant;
- (u) To contract with any third party, including any other property owners association, for the sharing of costs of maintaining Maintenance Areas;

(v) To take any and all other actions, and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations under the Declaration or these Bylaws or for the operational protection of the Association;

(w) To adopt reasonable rules from time to time governing conduct of Owners and other Persons occupying or otherwise located on the Property;

(x) To grant licenses to third parties, on such terms and conditions as the Board deems desirable, for the use of all or a portion of the Common Areas, including, without limitation, the Amenity Areas;

(y) To exercise any and all other powers provided for in the Declaration or in the North Carolina Planned Community Act; and

(z) To prepare and distribute budgets and financial statements of the Association; and

(aa) To compromise, settle, release and otherwise adjust claims, demands, causes of action and liabilities on behalf of the Association and Owners, as the case may be, provided any such claim, demand, cause of action or liability arises out of or relates to a condition or defect common to all or a majority of the Lots or improvements constructed thereon, or to the development, design, construction, condition, repair or maintenance of or damage or injury to or defect in the Common Area or part thereof, and make and receive all payment or other consideration necessary therefor or in connection therewith. For such purposes, the Board shall be, and hereby is, irrevocably appointed attorney-in-fact to act on behalf of all Owners upon such terms and conditions and for such consideration as may be approved by a majority of the Board. Anything to the contrary in these Bylaws, the Declaration, or the North Carolina Planned Community Act notwithstanding, no judicial or administrative proceeding (including without limitation any judicial or administrative proceeding against Declarant) shall be commenced or prosecuted by the Association unless approved by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Class I Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws. The immediately preceding sentence shall not apply, however, to (i) actions brought by the Association to enforce the provisions of the Declaration, (ii) the imposition and collection of assessments, charges or other fees hereunder, (iii) proceedings involving challenges to ad valorem taxation, (iv) counter-claims brought by the Association in proceedings instituted against it or (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services to the Property.

Notwithstanding anything contained herein to the contrary, none of the above-described rights and powers of the Board shall be obligatory on the part of the Board, and the failure or refusal by the Board to implement any such rights and powers shall not constitute a breach or default by the Board of any duties or obligations arising hereunder or otherwise owing to the Association Members. Notwithstanding anything contained herein to the contrary, during the Period of Declarant Control, the Board shall have the sole and exclusive authority to exercise all powers and rights of and to act in all instances on behalf of the Association, and the Members shall have no authority to exercise such powers or rights or to act by exercise of their votes,



except to the extent these Bylaws, the Declaration, the Planned Community Act or other applicable laws provide that the Board may not act unilaterally.

The Board may delegate any one or more of the powers described above to a managing agent or other third party upon such terms as the Board may prescribe.

## ARTICLE VII

### OFFICERS AND THEIR DUTIES

Section 1. Officers. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Association Members.

Section 3. Term. Each officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Compensation. No officer shall receive any compensation from the Association for acting as such.

Section 9. Duties. The duties of the officers, unless otherwise stated by a resolution of the Board, are as follows:

(a) President: The President shall be the principal executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall preside at all meetings of the Board; shall see that orders

and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, promissory notes and other written instruments and may co-sign all checks;

(b) Vice-President: The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board;

(c) Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Association Members, shall keep the corporate seal of the Association and affix it on all papers requiring said seal, shall serve notice of meetings of the Board and of the Association Members, shall keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board. The Secretary shall also prepare, execute, certify, and record amendments to the Declaration, with respect to any such amendments which, under the terms of the Declaration, are required to be prepared, executed, certified, or recorded by the Association;

(d) Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board, shall sign all checks and promissory notes of the Association, shall keep proper books of account, and shall prepare an annual report to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Association Members.

## ARTICLE VIII

### COMMITTEES

Subject to Section 1, of Article IV of these Bylaws, the Board shall appoint a Nominating Committee as provided in Section 3, of Article IV of these Bylaws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE IX

### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Association Member. The Declaration, the Articles and the Bylaws shall be available for inspection by any Association Member at the principal office of the Association, where copies may be purchased at reasonable cost. All financial and other records, including records of meetings of the Members and the Board, shall be made available, during reasonable business hours, for examination by any Member and the Member's authorized agents at the principal office of the Association, as required by these bylaws and Chapter 55A of the North Carolina General Statutes. The Association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. The Association shall make an annual income and expense statement and balance sheet available to all Members at no charge within seventy-five (75) days after the close of the fiscal year to which the information relates. A more extensive compilation, review or audit of the Association's books and records for the current or immediately preceding fiscal year may be required by a vote

of the majority of the Board or by the affirmative vote of a majority of the holders of votes in the Association present and voting in person or by proxy at any Annual Meeting or any Special Meeting duly called for that purpose.

## ARTICLE X

### ASSESSMENTS

As described more particularly in, and subject in all respects to, the Declaration, each Member is obligated to pay to the Association, among other assessments, charges and amounts, Annual Assessments, Special Assessments and Special Individual Assessments, all of which are secured by a continuing lien upon each Lot in the Property. Any Assessments which are not paid when due shall be delinquent. If an Assessment is delinquent, as more particularly described in the Declaration, the Assessment shall bear interest from the due date until the date such Assessment and interest thereon is paid at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same or foreclose the lien against the portions of the Property and improvements thereon owned by the defaulting Owner as of the Assessment due date. Additionally, the late charges, fines, costs of collection and reasonable attorneys' fees related to any such action or foreclosure shall be added to the amount of such Assessment, all as more particularly described in the Declaration. No Owner may exempt himself or herself from liability for Assessments or waive or otherwise escape liability from the Assessments by non-use of the Common Areas or abandonment of his or her property. The Association, upon written request, shall furnish to a Member or the Member's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board and every Member.

## ARTICLE XI

### CORPORATE SEAL

The Association shall have a seal circular in form having within its circumference the name of the Corporation, the state of its incorporation, the year of its incorporation, and the word "SEAL."

## ARTICLE XII

### AMENDMENTS

Subject to the limitations hereinafter contained and except as otherwise set forth in these Bylaws, the Articles and these Bylaws may be amended or modified at any time by a vote of no less than fifty-one percent (51%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with these Bylaws. Provided, however, if fifty-one percent (51%) of all votes entitled to be cast by the Association Members cannot be obtained at such a meeting, then the Articles and these Bylaws may be amended by obtaining the vote of fifty-one percent (51%) of all votes present at a duly held meeting of the Association Members at which a quorum

is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Association Members holding a sufficient number of votes to comprise, along with such voting Association Members, a total of fifty-one percent (51%) of all votes entitled to be cast by Association Members. Further provided, that any amendment or modification to the Articles and these Bylaws must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. In addition, during the Period of Declarant Control, Declarant, without obtaining the approval of any other Association Member or any other Owner or Owners other than Declarant, may make amendments or modifications to the Articles and these Bylaws which either (a) are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein or therein or (b) apply only to the portions of the Property then owned by Declarant. In addition to the foregoing rights, Declarant may, at Declarant's option, amend and modify the Articles and these Bylaws without obtaining; the consent or approval of any other person or entity if such amendment or modification is necessary to cause the Articles and these Bylaws to comply with the requirements of FHA, VA, the Federal National Mortgage Association or any other governmental agency.

### ARTICLE XIII

#### MISCELLANEOUS

Section 1. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2. In the case of any conflict between the Articles and the Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and the Bylaws or the Articles, the Declaration shall control.

Section 3. Upon dissolution, the Board may authorize and pay distributions, in cash or in-kind, to the Association Members in connection with any dissolution of the Association, termination of the Declaration or as otherwise permitted by applicable law.

### ARTICLE XIV

#### LIABILITY LIMITS; INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

Neither Declarant, nor any Association Member, nor the Board, nor the Association, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential

damages occasioned by any act or omission in the repair or maintenance of any premises; improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him or her in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he or she is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, these Bylaws, agreement, vote of Association Members or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article XIV, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

## CONFLICT OF INTEREST

In addition to the limitations of Article 8 of Chapter 55A of the North Carolina General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the Board or to a business, business associate, or relative of an officer or member of the Board, except as expressly provided for in these bylaws or in payment for services or expenses paid on behalf of the Association which are approved in advance by the Board.

## EROSION CONTROL PRACTICES

## EROSION CONTROL

(Page 1 of 4)

Each owner and Approved Builder shall, be responsible for causing the following minimum erosion control practices to be implemented and maintained throughout the course of all earth-disturbing operations until the time of final seeding:

a. Roadway and Homesite Construction Entrance

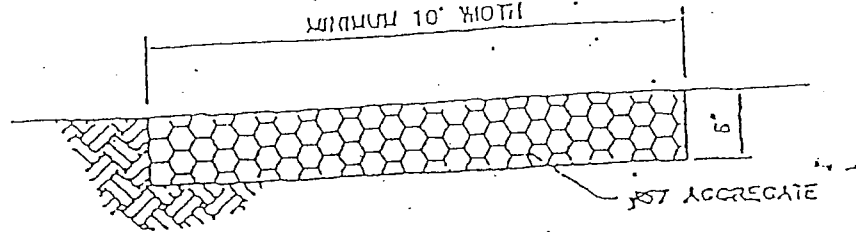
Prior to the start of any earth-disturbing operation, a stone construction entrance shall be installed on the building site (the "Construction Entrance"). The Construction Entrance shall: (i) if possible, be installed in the same location as the proposed driveway so as to minimize the amount of disturbed area; (ii) extend a minimum of 50 feet from an existing roadway; and (iii) be installed, preserved and replaced, if necessary, in accordance with the standards more particularly set forth on page 2 of this Exhibit D.

b. Silt Control Devices

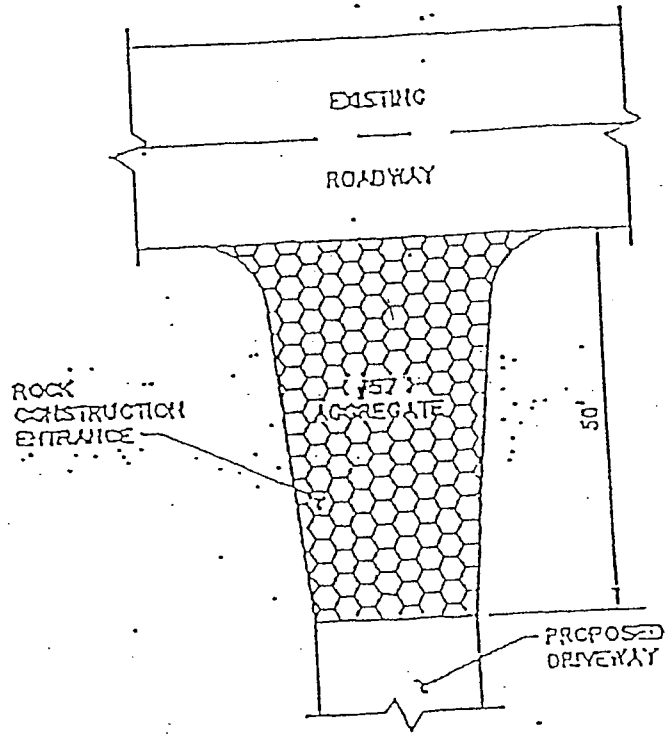
Prior to the start of any earth-disturbing operation, a diversion ditch and rock check dam shall be constructed and maintained on the building site (collectively "Silt Control Devices"). The Silt Control Devices shall be located at the boundary of the estimated disturbed area as set forth more particularly on page 3 of this Exhibit and shall be constructed, preserved and replaced, if necessary, in accordance with the standards set forth on page 4 of this Exhibit.

(Page 2 of 4)

MINIMUM 10' WIDTH



ELEVATION VIEW



PLAN VIEW

ROADWAY AND HOMESITE  
CONSTRUCTION ENTRANCE DETAIL

H. T. S.

CRESCENT RESOURCES  
INC

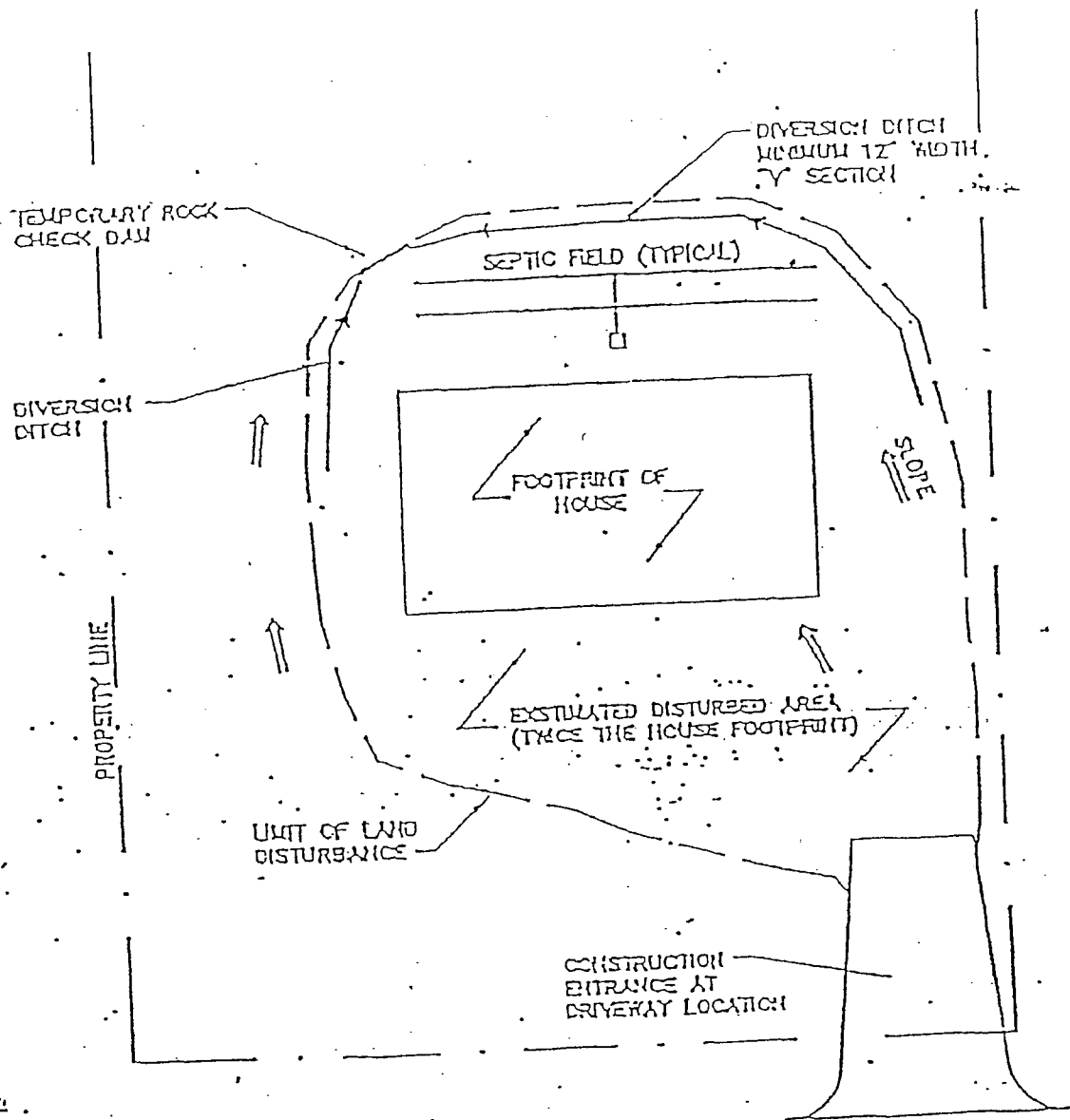
P.O. BOX 1003  
CHARLOTTE, NC

PROJECT

404



EROSION CONTROL  
(Page 3 of 4)



NOTES:

1. SILT CONTROL DEVICES TO REMAIN IN PLACE UP TO TIME OF FINAL SEEDING.
2. ON WATERFRONT LOTS, ALL SEDIMENT CONTROL DEVICES ARE NOT TO ENCRoACH ON 50 FT WATERFRONT SETBACK.

TYPICAL EROSION CONTROL MEASURES  
FOR INDIVIDUAL HOMESITES

H. T. S.

CRESCENT RESOURCES

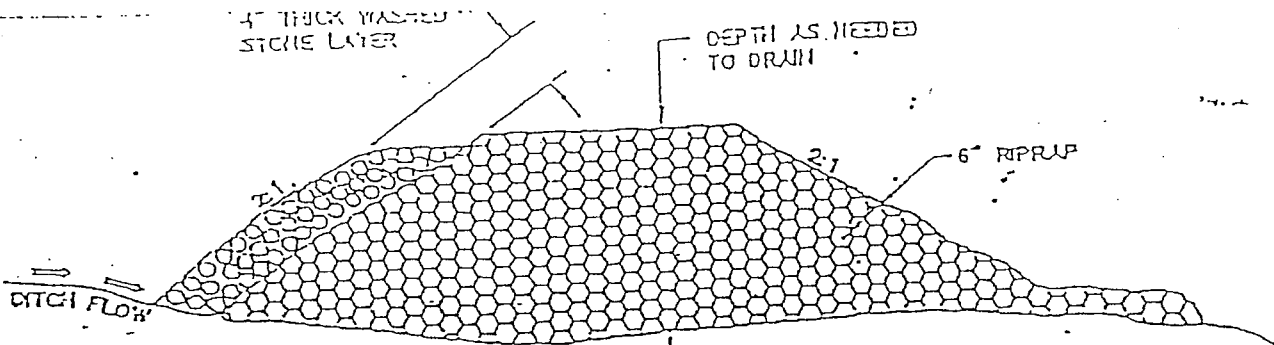
INC

P.O. BOX 1003  
CHARLOTTE, NC 28201

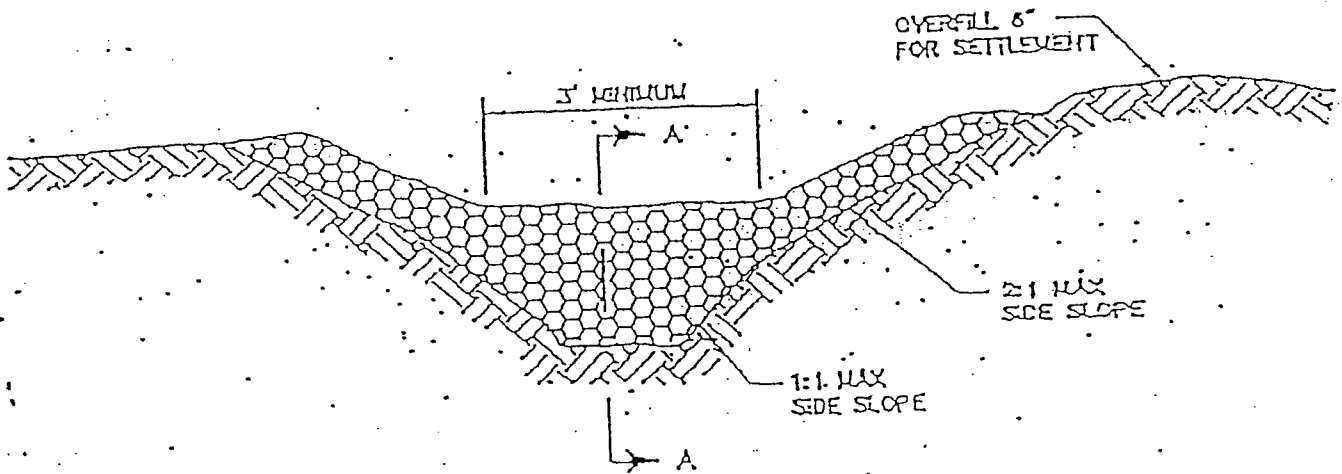
PROJECT

405

EROSION CONTROL  
(Page 4 of 4)



SECTION A-A  
N. T. S.



DITCH SECTION  
N. T. S.

ROCK CHECK DAM

CRESCENT RESOURCES  
INC

P.O. BOX 1003  
CHARLOTTE, NC 28201

PROJECT

404

Patricia A. Reel  
Register of Deeds

# Mcdowell County Register of Deeds

21 South Main Street, Suite A • Marion, NORTH CAROLINA 28752  
Telephone 828-652-4727 • Fax 828-652-1537 • E-Mail preelmcdowell@titlesearcher.com



\*\*\*\*\*

Filed For Registration: 08/07/2006 03:49:58 PM

Book: CRP 880 Page: 577-666

Document No.: 2006005980

RESTRICTIVE COVENANTS 90 PGS 281.00

Recorder: JANE B MCGEE

\*\*\*\*\*

State of North Carolina, County of McDowell

Filed for registration and Duly Recorded this 07TH day of AUGUST 2006.

PATRICIA A. REEL, REGISTER OF DEEDS


By: \_\_\_\_\_  
ASSISTANT REGISTER OF DEEDS

\*\*\*\*\*

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1. certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.

2006005979


MCDOWELL CO, NC FEE \$26.00  
PRESENTED & RECORDED:  
08-07-2006 03:49:57 PM  
Patricia A. Reel  
REGISTER OF DEEDS  
BY: JANE B MCGEE  
ASSISTANT REGISTER OF DEEDS  
BK:CRP 880  
PG:572-576

STATE OF NORTH CAROLINA

COUNTY OF MCDOWELL

[OLD WILDLIFE, PHASE 1]

**FIRST SUPPLEMENTAL MASTER DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR MASTER  
RECREATIONAL FACILITIES  
FOR  
CAMP LAKE JAMES**

**THIS FIRST SUPPLEMENTAL MASTER DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR MASTER  
RECREATIONAL FACILITIES FOR CAMP LAKE JAMES** (this "First Supplemental") is  
made and entered into this 7 day of August, 2006, by and between **CAMP LAKE  
JAMES, LLC**, a Delaware limited liability company (the "Recreational Facilities Declarant")  
and **OLD WILDLIFE CLUB, LLC**, a Delaware limited liability company (the "Community  
Declarant") (Community Declarant together with the Recreational Facilities Declarant, are  
sometimes hereinafter referred to collectively as the "Declarants").

Recreational Facilities Declarant is the Recreational Facilities Declarant under that  
certain Master Declaration and Amendment to Master Declaration of Covenants, Conditions,  
Restrictions, and Easements for Master Recreational Facilities for Camp Lake James recorded in  
the Burke County Register of Deeds Office at Book 1561 Page 276 and in the McDowell County  
Register of Deeds Office at Book 867 Page 444 (the "Declaration") which subjects certain

Drawn by and mail to:  
Brian P. Evans  
Kennedy Covington Lobdell & Hickman, L.L.P.  
Hearst Tower, 47<sup>th</sup> Floor, 214 North Tryon Street  
Charlotte, NC 28202

Return to: <sup>(3)</sup> Susan L. Haire  
118 N. Sterling St.  
Morganton, NC 28655

2428629.01  
LIB: Charlotte

property located in Burke and McDowell Counties, North Carolina to certain covenants, conditions, restrictions and easements for recreational facilities.

Community Declarant is the owner of certain property described on the Plats of "~~Crescent Resources~~ - Old Wildlife Club" recorded in Map Book 13 at Pages 29 - , and 38 of the McDowell County Public Registry (the "Phase 1 Maps") (such property being hereinafter referred to as the "Phase 1 Property");

Pursuant to Article II, Section 2 of the Declaration, Recreational Facilities Declarant and Community Declarant may cause Additional Property to be made subject to the terms and scheme of the Declaration by filing a supplemental declaration in the Office of Register of Deeds for McDowell County.

Declarant desires to supplement the Declaration to cause Lots 1 through 52 of the Phase 1 Property to be made subject to the terms and scheme of the Declaration.

NOW, THEREFORE, Declarants, by this First Supplemental, do hereby supplement the Declaration, as follows:

1. Supplement to Declaration. Declarants do hereby declare that all of the Lots 1-52 in Phase 1 Property as shown on the Phase 1 Maps is and shall be held, transferred, sold, conveyed and occupied subject to the Declaration and the covenants, conditions, restrictions, easements, charges and liens set forth therein and in this First Supplemental, all of which shall run with the title to the Phase 1 Property, and be binding upon all parties owning any right, title or interest in and to the Phase 1 Property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

2. Supplements to Definitions. The definitions set forth in Article I of the Declaration are hereby supplemented as follows:

a. The term "Community" as defined in Section 14, includes Lots 1-52 in Phase 1 Property of the Old Wildlife Club subdivision.

b. The term "Declarant" as defined in Section 15, includes the Community Declarant hereunder, Old Wildlife Club, LLC, a Delaware limited liability company.

c. The term "Plat" as defined in Section 31 includes the Phase 1 Maps Plats.

d. The term "Property" as defined in Section 32 includes Lots 1-52 in the Phase 1 Property.

e. The term "Supplemental Declaration" as defined in Section 38 includes this First Supplemental.

4. General Terms. All capitalized terms not otherwise defined in this First Supplemental shall have the same meanings as in the Declaration. All covenants, conditions, restrictions, and easements established by and contained in the Declaration are hereby ratified and shall remain in full force and effect, as amended hereby.

[Signatures on following pages]

IN WITNESS WHEREOF, Recreational Facilities Declarant and Community Declarant have caused this First Supplemental to be executed by their respective officer thereunto duly authorized, all on the day, month and year first above written.

RECREATIONAL FACILITIES  
DECLARANT:

CAMP LAKE JAMES, LLC, a Delaware limited liability company

By: M. Troy Lucas aka Michael Troy Lucas  
Name: M. Troy Lucas aka Michael Troy Lucas  
Title: Vice-President

Bunke County, North Carolina

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

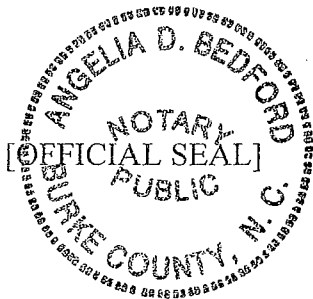
M. Troy Lucas aka Michael Troy Lucas Vice President  
*Name of principal(s)*

Date: 8-7-06

Angelia D. Bedford  
Official Signature of Notary Public

Angelia D. Bedford, Notary Public  
Notary printed or typed name

My commission expires: 3-5-2011



COMMUNITY DECLARANT:

OLD WILDLIFE CLUB, LLC, a Delaware limited liability company

By: *M. Troy Lucas aka Michael Troy Lucas*  
Name: M. Troy Lucas aka Michael Troy Lucas  
Title: Vice-President

Burke County, North Carolina

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

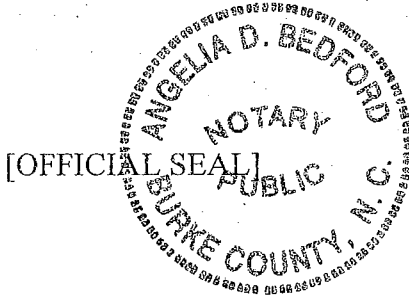
M. Troy Lucas aka Michael Troy Lucas, Vice-President  
*Name of principal(s)*

Date: 8-7-06

*Angelia D. Bedford*  
Official Signature of Notary Public

Angelia D. Bedford, Notary Public Notary  
printed or typed name

My commission expires: 3-5-2011





Patricia A. Reel  
Register of Deeds

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RESTRICTIVE COVENANTS 5 PGS 26.00

Recorder: JANE B MCGEE

\*\*\*\*\*

State of North Carolina, County of McDowell

Filed for registration and Duly Recorded this 07TH day of AUGUST 2006.

PATRICIA A. REEL, REGISTER OF DEEDS

A handwritten signature in cursive script that reads "Jane B McGee".

By: \_\_\_\_\_  
ASSISTANT REGISTER OF DEEDS

\*\*\*\*\*

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