

NOTE: The townhomes neighborhood, The Harvest, within Summerwind Plantation is an age restricted community. Please refer to Article III Restrictions Affecting Lots in the document for more information.

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NORTH CAROLINA

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR ALL RESIDENTIAL NEIGHBORHOODS IN  
SUMMERWIND PLANTATION**

JOHNSTON COUNTY

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ALL RESIDENTIAL NEIGHBORHOODS IN SUMMERWIND PLANTATION** (hereinafter referred to as the "Amended Declaration") made and entered into the 9th day of January 2014, by Oakmont Development Partners, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant" or "Owner;

WHEREAS, the Declaration of Covenants, Conditions and Restrictions For All Residential Neighborhoods in Summerwind Plantation is recorded in Book 3507, Page 169, Johnston County Registry (hereinafter referred to as "Declaration"); and,

WHEREAS, Oakmont Development Partners, LLC is the successor Declarant by virtue of an Assignment of Declarant Rights recorded in Book 4285, Page 670, Johnston County Registry and in Book 015253, Page 00387, Wake County Registry; and,

WHEREAS, Oakmont Development Partners, LLC, as successor Declarant owns a portion of the property described in Exhibits A and B attached to the Declaration; and,

WHEREAS, the Declaration provides in Article 21.1 that so long as Declaration owns property described in Exhibits A and B attached to the Declaration, it may unilaterally amend the Declaration for any purpose, provided the amendment has no materially adverse effect upon the rights of the Members; and,

NOW, THEREFORE, the Declarant does hereby amend and restate the Declaration in its entirety as consented to by the attached Owners as follows

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA, AND THE DISPLAY OF THE POLITICAL SIGNS, PURSUANT TO THE FOLLOWING LANGUAGE:

(i) "NO MORE THAN TWO (2) FLAGS MAY BE DISPLAYED USING A BRACKET OR OTHER APPROVED DEVICE MOUNTED TO THE DWELLING UNIT SO LONG AS THE SIZE OF THE FLAG DISPLAYED DOES NOT EXCEED THAT OF A STANDARD UNITED STATES FLAG (WHICH SHALL IN ALL EVENTS BE NO LARGER THAN 4 FEET BY 6 FEET AND MAY BE FURTHER LIMITED AS DETERMINED IN THE BOARD'S DISCRETION)."

(ii) "MEMBERS AND RESIDENTS SHALL BE PERMITTED TO DISPLAY PATRIOTIC SIGNS, SYMBOLS AND DECORATIONS ON THEIR LOTS OF THE KINDS NORMALLY DISPLAYED IN SINGLE-FAMILY RESIDENTIAL NEIGHBORHOODS, PROVIDED THAT THE ASSOCIATION MAY REGULATE ALL SUCH DISPLAYS FOR CONFORMITY WITH THIS DECLARATION AND, SPECIFICALLY, WITH THE COMMUNITY-WIDE STANDARD."

(iii) "THE ASSOCIATION SHALL NOT REGULATE THE CONTENT OF POLITICAL SIGNS; HOWEVER, THE ASSOCIATION MAY ADOPT REASONABLE TIME, PLACE AND MANNER RESTRICTIONS REGARDING THE POSTING OF SUCH SIGNS, AS ESTABLISHED IN THE DESIGN GUIDELINES."

(iv) "THE SIGNS ALLOWED BY CLAUSE (ii) OF THE FOREGOING PARAGRAPH SHALL ONLY BE ALLOWED IN THE FRONT YARD OF A LOT AND WITHIN TEN (10) FEET OF THE FOUNDATION OF THE DWELLING UNIT".

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**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUMMERWIND PLANTATION** (“Declaration”) is made as of the above date by OAKMONT DEVELOPMENT PARTNERS, LLC, a North Carolina limited liability company (“Declarant”). Any reference in collateral documentation for the Community (as hereinafter defined) to “CC&Rs” or “Parcel Declaration” shall refer to this Declaration, as the same may hereafter be amended and/or supplemented from time to time.

This Declaration is part of a general plan to protect and enhance the value and desirability of all property which is now or hereafter becomes bound by this Declaration.

**A. INTRODUCTION TO THE COMMUNITY**

*Declarant has created this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance and preservation of the Community. The Community, which may be a part of the Master Community (as hereinafter defined), is also subject to the Master Declaration (as hereinafter defined).*

**Article I Creation of the Community**

**1.1 Purpose and Intent.**

Declarant, who together with the Association owns all of the real property described in Exhibit A (the “Existing Property”) attached hereto and incorporated herein by reference, intends by recording this Declaration to establish a general plan of development for the planned community known as Summerwind Plantation for residential, recreational and other uses. To evidence its consent to the recording of this Declaration with respect to property it owns within the Existing Property, the Association has caused one of its duly authorized officers to sign this Declaration.

This Declaration provides for the Community’s overall development, administration, maintenance and preservation, and provides flexible and reasonable procedures for its future expansion. Declarant intends, without obligation, that when developed fully, Summerwind Plantation may include several residential neighborhoods, one or more clubhouses, activity centers and recreational areas, including but not limited to open spaces, walkways, golf cart paths and other social, commercial and civic buildings and facilities.

An integral part of Declarant’s development plan is the creation of the Association (as hereinafter defined). Declarant desires the Association to operate as a non-profit corporation (i) to own, operate, manage and maintain the Common Areas, including all community facilities and amenities located thereon, and certain other areas in the Community, (ii) to administer and enforce this Declaration and the other Governing Documents (as hereafter defined), including the powers to levy, collect and disburse the Assessments and other charges imposed hereunder, (iii) to act as the agent and representative of the Owners (as hereinafter defined) and (iv) for other lawful purposes set forth in the by-laws and articles of incorporation for the Association, as the same may be amended from time to time. Every Owner of real property within Summerwind Plantation shall be a Member (as hereinafter defined) of the Association.

The Master Plan (as hereinafter defined) provides for a variety of land use classifications, but only a subset of those approved land uses shall be allowed in Summerwind Plantation. The initial land use classifications in Summerwind Plantation shall be (i) Single Family Residential, (ii) Townhouse Residential Use, (iii) Recreational Use, (iv) Master and Neighborhood Common Areas and (v) Natural Open Space Use. The foregoing list of classifications may be amended from time to time, in accordance with procedures prescribed by this Declaration and by applicable federal, state and local law. Future amendments to the foregoing list of classifications may include such other residential or other related uses, including, without limitation, condominium uses, as may hereafter be authorized pursuant to a Supplemental Declaration, as well as such non-residential or other related uses, including, without limitation, Commercial Uses, as may hereafter be authorized pursuant to a Supplemental Declaration. For purposes of this paragraph, "Commercial Uses" shall mean the use of any Parcel or portion thereof which is owned by one person or entity or by a group of persons and/or entities for one or more commercial purposes allowed by the Master Community, including, without limitation, the following: apartments, assisted living facilities, general and professional offices, and shopping centers, provided, however that Commercial Uses shall not be allowed on any Common Areas or on other areas or facilities of common use which are owned by any superior or subordinate owners' association or which are owned in common by residential condominium owners. For purposes of this paragraph, "Recreational Uses" shall be deemed to include use of the Recreational Facilities for their intended purposes.

Declarant reserves the right, without obligation and without the further consent of the Association or its Members, to incorporate all or part of the Additional Property (as hereinafter defined) into the Community and in doing so to subject such part or entirety of the Additional Property to this Declaration, as more particularly described in Section 11.1 hereof.

In accordance with Article XII hereof, Declarant reserves the right, without further consent of the Association or its Members, to amend this Declaration to withdraw any unimproved portions of real property from the scope of this Declaration.

As the development of Summerwind Plantation proceeds, Declarant, as it deems appropriate and without incurring any obligation to do so, intends (i) to Record various subdivision plats, (ii) to dedicate to public use, or to retain for private use and convey to the Association, all or part of the Additional Property which is used for streets, roadways, drainage, flood control and general public use and (iii) as more particularly described in Article XI hereof, to record Supplemental Declarations with respect to all or part of the Additional Property which may (a) subject such property to this Declaration, (b) designate the purpose(s) for which such portions of the Additional Property may be used and (c) set forth additional covenants, conditions and restrictions applicable to such portions of the Additional Property.

This document does not and is not intended to create a condominium under North Carolina law.

### 1.2 Binding Effect.

All Property and any Additional Property made subject to this Declaration in the future by Recording one or more Supplemental Declarations, shall be owned, conveyed, and used subject to this Declaration. This Declaration shall run with the title to such property and shall be binding upon all Persons having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns, regardless of whether said binding effect of this Declaration is specifically referenced in any conveyance deed.

Declarant, the Association, any aggrieved Owner and their respective legal representatives, heirs, successors and assigns may enforce this Declaration. Unless otherwise provided by North Carolina law, this Declaration shall have perpetual duration, unless terminated as set forth herein. The termination of this Declaration shall require a written termination agreement executed or ratified in the same manner as a deed by the Members to whom eighty percent (80%) or more of the total votes in the Association are allocated, at a meeting duly called and held for the purpose of terminating this Declaration. Such written termination agreement shall be recorded in the Johnston County Registry, and shall otherwise comply with the terms of North Carolina General Statutes Chapter 47F, Section 2-118.

In any event, if any provision of this Declaration would be unlawful, void or voidable because of any law which restricts the period of time in which covenants on land may be enforced, such provision shall expire fifty (50) years from the date of recording of the latest Supplemental Declaration or a shorter time, if mandated by law. Nothing in this paragraph shall be construed to permit the termination of any easement created in this Declaration without the consent of the parties benefited by such easement.

### 1.3 Governing Documents.

The Governing Documents (including this Declaration) create a general plan of development for Summerwind Plantation which may be supplemented by additional covenants, rules, regulations, restrictions and easements applicable to particular Neighborhoods (as hereinafter defined).

The following documents, including all existing and future amendments thereto, comprise the Governing Documents:

#### **Summerwind Plantation Governing Documents**

<b>Name of Document</b>	<b>Purpose</b>
Articles of Incorporation (to be filed with the North Carolina Secretary of State)	establish the Association as a non-profit corporation under North Carolina law
By-Laws (to be adopted by the Board)	describe the system governing the Association's internal affairs, including, without limitation, voting rights, elections, meetings and officers
Declaration (to be Recorded)	creates obligations and rights which are binding upon the Association and all present and future owners of property in the Community



Supplemental Declaration (to be recorded, if entered into)	can add property to the Community; can impose additional obligations or restrictions applicable to one or more Parcels
Design Guidelines (to be adopted by Declarant)	establish architectural standards, guidelines and procedures for improvements and modifications to Lots and Common Areas, including structures, landscaping, and other items on Lots
Use Restrictions (initial version set forth in Exhibit C to this Declaration)	govern use of privately owned property and activities within Summerwind Plantation
Board Resolutions and Rules (to be adopted by the Board)	establish rules, policies and procedures for operation of the Association; regulate operation and use of Common Area
Action without Meeting (to be adopted by the Board)	establish rules, policies and procedures for operation of the Association; regulate operation and use of Common Area
Rules and Regulations (to be adopted by the Board)	establish rules and regulations for use of Community and Common Area

All of the foregoing documents, other than this Declaration, which shall be amended in accordance with the terms hereof, may be amended from time to time by the Board of Directors or Declarant without the approval of Owners, and all current Owners are responsible for obtaining a copy of the most current such document.

It is acknowledged that because the Community may be part of a Master Community, the Community and the Governing Documents may be subject and subordinate to the Master Declaration, if one is recorded and the authority of the Master Association (as hereinafter defined and if formed). Pursuant to the Master Declaration, the Master Delegate, if appointed by Declarant, will represent the Community in the Master Association, but none of Declarant, the Association nor the Master Delegate has, or purports to have, control over the Master Association, or the ability to cause amendments to be made to the Master Declaration or to any other documents governing the Master Community.

Any Neighborhood within the Community may choose to enact additional restrictions or provisions with respect to a Lot or group of Lots within the Neighborhood, provided the same are more restrictive than the provisions of this Declaration, unless written consent is obtained in accordance with Section 6.4(a) hereof. If written consent pursuant to Section 6.4(a) hereof is not obtained with respect to additional restrictions for a Neighborhood, then between this Declaration and any additional restrictions or provisions enacted by a Neighborhood, the more restrictive of the two will control. If written consent pursuant to Section 6.4(a) hereof is obtained with respect to additional restrictions for a Neighborhood, then between this Declaration and any additional restrictions or provisions enacted by a Neighborhood, the Neighborhood's restrictions will control. Notwithstanding the foregoing provisions of this paragraph and except as permitted under the Master Declaration, so long as Declarant owns any Existing Property or Additional Property, no Person shall record any additional covenants, conditions or restrictions affecting any portion of the Community without Declarant's written consent, it being acknowledged that the foregoing Declarant consent shall be of a more general nature than the consent required pursuant

to Section 6.4(a) hereof. Any instrument recorded in violation of the foregoing sentence is void and of no force and effect.

If there exists any conflict among North Carolina law, ordinances of Johnston County, the Master Declaration, this Declaration, the Articles and the By-Laws, then North Carolina law, ordinances of Johnston County, the Master Declaration, this Declaration, the Articles and the By-Laws (in that order) shall prevail.

The Governing Documents and the Master Declaration apply to all Owners and all Occupants, as well as their respective Tenants, guests and invitees. **The obligations set forth in this Declaration shall not apply to Declarant unless it is specifically noted to the contrary in each instance.** Any lease on a Lot shall provide that the Tenant and all Occupants of the leased Lot shall be bound by the terms of the Governing Documents and the Master Declaration and shall be responsible for assuring that their guests and invitees comply with the same.

Unless otherwise specifically provided herein, any notice provided for in the Governing Documents shall be provided in accordance with the By-Laws.

If any judgment or court order should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity or applicability of other provisions hereof.

All diagrams that are included in the Governing Documents are intended only to summarize the express written terms therein. **Diagrams are not intended to supplant or supplement the express written or implied terms contained in the Governing Documents.**

#### 1.4 Calculation of Time Periods and Deadlines.

In computing the number of days for purposes of any provision of this Declaration or any of the other recorded documents referenced herein, all days shall be counted, including Saturdays, Sundays and federal holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or federal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or federal holiday.

### **Article II Concepts and Definitions**

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms used and not defined elsewhere in this Declaration shall be defined as described below. Capitalized terms defined or described elsewhere in this Declaration shall be further defined or described as and if provided below.

“Act”: The North Carolina Planned Community Act, General Statutes of North Carolina Sections 47F-1-101 through 47F-3-120, as amended from time to time.

“Activity Card”: A card issued by the Association, initially in accordance with the terms and conditions set forth in Article X hereof, which confers upon the holder rights of access to and use of the Common Area facilities, subject to the applicable Governing Documents.

“Additional Property”: All or any portion of the property described in Exhibit B attached hereto and by this reference made a part hereof.

“Age-Qualified Occupant”: A Person who is 55 years of age or older and who has designated

a Dwelling Unit as such person's primary residence in the Neighborhood known as Harvest at Summerwind Plantation. Primary residence may be established by using the Dwelling Unit's address as the mailing address for the individual or the official address on file for voter registration purposes or the address set forth on such person's driver's license or other means to establish legal residency under the law of the state where the Dwelling Unit is located.

"Architectural Review Committee" or "ARC": The committee established to review plans and specifications for the construction or modification of Improvements and to administer and enforce the Design Guidelines within the Community, as more particularly described in Article IV hereof.

"Articles": The articles of incorporation for the Association, filed with the North Carolina Secretary of State, as the same may be amended from time to time.

"Assessment" or "Assessments": Any or all Annual Base Assessments, Neighborhood Assessments, Special Assessments, Maintenance Charges, Special Use Fees, Security Fees, Transfer Fees or any other fees, fines or charges made or assessed hereunder by the Association against an Owner and his or her Lot in accordance with the provisions of Section 9.1 hereof.

"Assessment Lien": A lien that is created or imposed as set forth in Section 9.8.

"Assessable Property": Any Lot or Parcel, excluding Exempt Property.

"Association": Summerwind Plantation Homeowners Association, Inc., a North Carolina non-profit corporation, its successors or assigns.

"Base Assessment": The Assessment levied annually to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 9.1 hereof.

"Benefited Assessment": Assessments charged to a particular Lot or Lots from time to time for Association expenses as described in Section 9.5.

"Board of Directors" or "Board": The body responsible for the Association's general governance and administration selected and/or elected as provided in the By-Laws.

"Budget": The annual budget for Common Expenses, Base Assessments, Benefited Assessments and all other income and expenses anticipated by the Association for the coming year.

"Builder" shall mean any person, entity, firm, corporation, limited liability company, general or limited partnership, or any other entity which purchases a Lot from Declarant for the purpose of constructing a single family dwelling on the Lot.

"By-Laws": The By-Laws of the Association, as the same may be amended from time to time. A copy of the initial By-Laws is attached to this Declaration as Exhibit D; provided, however, that the By-Laws may be amended from time to time in accordance with the terms thereof, without the need of any concurrent amendment to or recording of this Declaration.

"Summerwind Plantation Plan": The land use plan for the development of Summerwind Plantation as approved by Johnston County, as the same may be amended from time to time.

Declarant may annex Additional Property into the Community regardless of whether such property is shown on the Summerwind Plantation Plan.

“Common Area” and “Common Areas”: All real and personal property, including easements and other land use rights, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including areas designated as Common Area by Declarant from time to time and areas designated as “common element(s)”, “common area(s)” or “open space” on a plat. Common Area includes Limited Common Areas, as defined below.

“Common Actual Expenses”: The actual expenses that the Association incurs for the general benefit of all Owners, including reserves, if any, which the Board finds necessary or appropriate.

“Common Estimated Expenses”: An estimate of the expenses that the Association expects to incur for the general benefit of all Owners, including reserves, if any, which the Board finds necessary or appropriate.

“Community” or “Summerwind Plantation”: The Property described in Exhibit A, and the Additional Property described on Exhibit A which can be is subjected to this Declaration in accordance with Article XI.

“Community-Wide Standard”: The standard of conduct, maintenance or other activity generally prevailing in the Community, or the minimum standard established pursuant to the Design Guidelines, Use Restrictions or Board Resolutions and Rules, whichever provides the strictest standard, unless a different standard applies to a Neighborhood in accordance with the terms of Section 6.4(a) hereof. Declarant may initially establish the Community-Wide Standard, which subsequently may be more specifically defined in the Design Guidelines, the Use Restrictions or Rules and Board resolutions, including any amendments thereto. Any amendment of the Community-Wide Standard shall meet or exceed the standards set during the Declarant Control Period. The Community-Wide Standard may contain both objective and subjective elements and may or may not be in writing. The Community-Wide Standard may evolve as development progresses and as the needs, desires and demands within the Community change. The Community-Wide Standard is the strictest of the minimum standards set in the Design Guidelines, Use Restrictions, Board Resolutions and Rules, this Declaration, any Supplemental Declaration or as otherwise specified by Declarant or the Board, including in accordance with Section 6.4(a) hereof.

“Declarant”: Oakmont Development Partners, LLC, a North Carolina limited liability company, or any successor or assign who holds or takes record title to any portion of the Existing Property or the Additional Property for purposes of development and/or sale, provided such successor or assign is designated as the successor or assign by the then-current Declarant in an instrument which is Recorded by or on behalf of the then-current Declarant.

“Declarant’s Affiliate”: Any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

“Declarant Control Period”: The period of time during which Declarant may appoint a majority of the Board members. The Declarant Control Period ends upon the earliest occurrence of any of the following:

(a) when 100% of the Lots permitted under the Summerwind Plantation Plan are issued certificates of occupancy and are owned by Members other than Declarant; provided, however; that in the event Additional Property is annexed into the Summerwind Plantation Plan or Community, the Declarant Control Period shall be reinstated until such time as 100% of the Lots permitted within such Additional Property are issued certificates of occupancy and are owned by Members other than Declarant,

(b) December 31, 2028 or

(c) when, in its sole discretion, Declarant so determines.

“Declaration”: This Declaration of Covenants, Conditions and Restrictions for Summerwind Plantation, as amended from time to time, in accordance with the terms hereof.

“Design Guidelines”: The architectural, design and construction guidelines and review procedures adopted pursuant to Article IV hereof for all construction within the Community, other than new construction and modifications to existing structures performed by Declarant.

“Development Agreement”: A Development Agreement with a local jurisdiction having jurisdiction over the Community, providing for charges to be imposed and other obligations affecting development of the Community, which may be amended by Declarant from time to time.

“Dwelling Unit”: A single building or structure or portion of a building or structure situated upon a Lot, which is intended for use and occupancy either as a Townhome Dwelling Unit or as a separate attached or detached Dwelling Unit for one or more persons.

“Existing Property”: As defined in Section 1.1 hereof.

“Governing Documents”: As defined in Section 1.3 hereof.

“Harvest at Summerwind Plantation”: A Neighborhood in Summerwind Plantation which is established for Age-Qualified Occupants and as governed by the Neighborhood Declaration of Protective Covenants for the Harvest at Summerwind Plantation recorded in Book 3509, Page 707, Johnston County Registry.

“Housing Act”: Collectively, and as all of the same may be amended from time to time, (i) the Fair Housing Amendments Act, 42 U.S.C. §3601 *et seq.* (1888), as amended, (ii) the exemption set out in 42 U.S.C. §3607(b)(2C), and (iii) the regulations promulgated thereunder allowing discrimination based on familial status, as it applies to the Neighborhood of Harvest at Summerwind Plantation.

“Improvement” or “Improvements”: Any (a) Dwelling Unit, building, fence or wall; (b) tennis court, basketball court, road, fishing pier, driveway, golf cart path, parking area or satellite dish; (c) trees, plants, shrubs, grass or other landscaping Improvements of every type and kind; and (d) any other structure of any kind or nature. Swimming pools are prohibited unless

specifically authorized and governed by the terms of any Neighborhood Declaration or any Supplemental Declaration.

“Limited Common Area”: A portion of the Common Area primarily benefiting one or more, but less than all, Neighborhoods or Owners, as more particularly described in Article XIV hereof.

“Lot”: A portion of Summerwind Plantation, whether improved or unimproved, which may be independently owned and conveyed, and upon which a Dwelling Unit is intended for development, use, and occupancy. The term “Lot” shall refer to the land, if any, which is part of the Lot as well as any Improvements, including any Dwelling Unit, on the Lot. The boundaries of each Lot shall be shown on a Plat or other recorded map; provided, in the case of a building containing multiple Dwelling Units for individual sale, each Dwelling Unit capable of being sold individually shall be a separate Lot. The term “Lot” shall not include Common Area, or property dedicated to public use or land owned by Declarant within the Master Plan (as hereinafter defined) not yet bound by a Supplemental Declaration.

“Master Association”: Summerwind Plantation Master Property Owners Association, Inc., if formed, will be a North Carolina non-profit corporation, established in accordance with the Master Declaration as the property owners’ association for the Master Community, and its successors and assigns.

“Master Community”: The real property located in Johnston County comprising the development in which the Community is located and of which it is a part, commonly known as the Summerwind Plantation Subdivision and subject to the Master Plan.

“Master Declarant”: ~~Summerwind Plantation~~, Oakmont Development Partners, LLC, a North Carolina limited liability company, or any successor, successor-in-title or assign, who is properly designated as “Declarant” under the Master Declaration, if recorded, as more particularly provided in the Master Declaration.

“Master Declaration”: That certain Master Declaration of Covenants, Conditions and Restrictions for Summerwind Plantation which may or may not be recorded by Declarant, and as the same may heretofore and hereafter be amended, in accordance with the terms thereof.

The Master Declaration, if recorded, upon its recordation, shall be deemed effective as if recorded prior to the Declaration, any subsequently recorded Parcel Declaration, or any previously recorded or subsequently recorded Neighborhood Declaration. Notwithstanding anything to the contrary contained in this Declaration, any Neighborhood Declaration, any other Parcel Declaration, or any amendment thereto, failure to record a Master Declaration shall in no way invalidate or impair the validity and enforceability of all the covenants, terms, conditions of this Declaration or any Neighborhood Declaration.

“Master Plan”: The land use plan for the development of the Master Community, as approved by Johnston County, as the same may be amended from time to time. Inclusion of property as part of the “Age Restricted” parcel on the Master Plan shall not under any circumstances obligate Declarant to subject such property to this Declaration or limit Declarant’s ability to subject such property to a different declaration, nor shall the omission of property described as Additional Property from the Master Plan bar its later submission to this Declaration.

“Member”: Each Owner of a Lot, subject to Section 6.2 hereof, holding Membership in the Association pursuant to this Declaration.

“Membership”: A membership in the Association and the rights granted to the Owners of Lots pursuant to Section 6.2 hereof to participate in the Association.

“Mortgage”: A mortgage, a deed of trust, a deed to secure debt or any other form of security instrument affecting title to any Lot.

“Mortgagee”: A beneficiary or holder of a Mortgage.

“Neighborhood”: A group of Lots designated by Declarant as a separate neighborhood in accordance with Section 6.4(a) hereof. Lots within Neighborhoods may share Limited Common Areas and/or receive benefits or services from the Association which are not provided to all Lots. A Neighborhood may include more than one housing type and may include noncontiguous parcels of property. If the Association provides benefits or services to all Lots within a particular Neighborhood, then such Lots may be required to pay separate Neighborhood Assessments for such benefits or services.

“Neighborhood Assessments”: Assessments levied against all of the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Section 9.2 hereof.

“Neighborhood Declaration”: Additional covenants and restrictions applicable to only a particular Neighborhood or Neighborhoods. Neighborhood Declarations may supplement, create exceptions to or otherwise modify the terms of this Declaration as it applies to the Neighborhood burdened by the Neighborhood Declaration in order to reflect the different character and intended use of such Neighborhood, but they shall not, in any event, create a reduction in annual Assessments due hereunder. Unless a Neighborhood Declaration is executed by Declarant or the Association, it may not relax or waive any standards or rules set forth in this Declaration.

“Neighborhood Expenses”: The actual or estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, including any reserve for capital repairs and replacements and administrative charges authorized by this Declaration or the Supplemental Declaration(s) or Neighborhood Declaration(s) applicable to such Neighborhood(s).

“Neighborhood Representative”: A representative, selected by the Members owning Lots within a Neighborhood and approved by Declarant, who represents such Neighborhood on Association matters that do not require a vote of all Members.

“Occupant”: Any individual other than an Owner who Occupies a Dwelling Unit or is in possession of a Lot or Parcel, or any portion thereof or building or structure thereon, whether as a lessee or otherwise, other than on a merely transient basis (including, without limitation, a Resident).

“Occupy,” “Occupies” or “Occupancy”: Unless otherwise specified in the Governing Documents, staying overnight in a particular Dwelling Unit for at least 90 total days in a consecutive twelve (12) month period.

“Owner”: Any Person or Persons who individually or collectively own fee title to a Lot or Parcel (as evidenced by a recorded instrument), provided that: (a) Declarant (and not the fee title holder) shall be deemed to be the “Owner” of each Lot or Parcel with respect to which fee title is

held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of Declarant or a Declarant Affiliate; (b) in the event that, and for so long as, Declarant or a Declarant Affiliate has a right or option to acquire any one or more Lots or Parcels (other than by exercise of a right of first refusal) contained in a written agreement, then Declarant or a Declarant Affiliate shall be deemed the "Owner" of such Lot(s) or Parcel(s), instead of such fee title holder(s); (c) in any case where fee title to a Lot is vested in a trustee under a deed of trust pursuant to the North Carolina General Statutes, the owner of the trustor's or grantor's interest under the deed of trust shall be deemed the "Owner" of that Lot. Where reference is made in this Declaration to Lots or Parcels "owned" by a Person, such phrase shall be deemed to refer to Lots or Parcels of which that Person is the Owner as determined pursuant to this definition.

"Parcel": Any tract or area of real property in the Community, and all Improvements situated thereon, shown as a separate parcel of land on the Summerwind Plantation Plan; provided, however, that in the event a Parcel is subdivided into separate tracts, such resulting separate tracts, and not the parent parcel shall thereafter constitute Parcels hereunder. If the same Person owns two or more contiguous parcels of land, they shall be considered one Parcel for purposes of this Declaration. A Parcel shall cease to be a Parcel when it has been fully subdivided into Lots (together with Common Area and/or streets, if any). If a portion of a Parcel is subdivided into Lots (and Common Area, if any), the subdivided portions shall cease to be part of the Parcel, but each remaining unsubdivided portion (not constituting Lots, Common Area or streets) shall be a Parcel if it otherwise meets the requirements set forth in this definition.

"Party Structure": Each wall, fence, driveway or similar structure built on the Lots which serves and/or separates any two adjoining Lots or a Lot and Common Area.

"Person": An individual, corporation, partnership, business trust, estate, trustee, association, limited liability company, limited liability partnership, joint venture, government governmental subdivision or agency, or any other legal or commercial entity.

"Plat": Any recorded engineering or land survey plat for all or any portion of the Community. During the Declarant Control Period, a plat must be executed by or otherwise consented to by Declarant prior to recording.

"Property": The real property described in Exhibit A, together with such portions of the Additional Property as described on Exhibit B which can be made subject to this Declaration, from time to time, pursuant to annexation provisions set forth in Section 11.1 hereof.

"Record", "Recording" or "Recorded": Respectively, to record, the recording of or recorded version of a Legal instrument or plat in the Register of Deeds for Johnston County, in the state of North Carolina.

"Recreational Facilities": All facilities constructed or installed in the Community for the common recreational use of all Members, and any Common Areas on which such facilities are located. Recreational Facilities may include, but neither Declarant nor the Association shall have any obligation to construct, tennis courts, clubhouses serving any tennis court(s), activity centers, playing surfaces for bocce and croquet, chipping and putting greens, fishing ponds, and piers, docks and related structures, athletic fields, gymnasiums, walking trails, bicycle paths, spa facilities and the like. The foregoing list is for purposes of illustration only and is not exhaustive. In accordance with the terms of this Declaration, although all Members shall be entitled to use Recreational Facilities, fees may be charged for the use of certain Recreational Facilities and reasonable limitations in use may be established, including without limitation, limits on the



number of people served at any particular time and advance registration or scheduling requirements. Additional information concerning the rights of others in and to the Recreational Facilities is set forth in Section 12.11 hereof, including the ability of clubs or other outside organizations to offer services from time to time to a portion of the Community, using the Recreational Facilities.

“Qualified Occupant”: Any person (i) who is an Age-Qualified Occupant in the neighborhood known as Harvest at Summerwind Plantation; (ii) a person 19 years of age or older who Occupies a Dwelling Unit with an Age-Qualified Occupant or (iii) a person 19 years of age or older who Occupied a Dwelling Unit with an Age-Qualified Occupant and who continues, without interruption, to Occupy the same Dwelling Unit after the death of the last Age-Qualified Occupant occupies the Dwelling Unit. An individual who occupies a Dwelling Unit but is not a Qualified Occupant shall not be entitled to any rights or privileges granted hereunder to Qualified Occupants in the neighborhood known as Harvest at Summerwind Plantation.

“Reserve” or “Reserves”: Funds that are set aside by an association to pay for the repair or replacement of Community assets for which the Association is responsible.

“Reserve Study”: A study conducted on behalf of the Association to determine if the Association is sufficiently funded. The results of any Reserve Study shall be used in setting the next budget for the Association, including the budget for Reserves.

“Single Family”: A group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.

“Special Assessment”: Any Assessment levied and assessed against all Owners or some Owners in accordance with Section 9.4 hereof.

“Supplemental Declaration”: A Recorded instrument in which Declarant (i) subjects Additional Property to this Declaration, (ii) designates Neighborhoods, (iii) identifies or redefines Common Area and Limited Common Area and/or (iv) imposes, whether expressly or by reference, additional restrictions and obligations on the land described in such instrument.

“Tenant”: A Person who has an agreement, that has been approved in writing by the Board, with an Owner or another Tenant (as sublandlord) to lease a Dwelling Unit for a minimum of six (6) months, provided that a copy of the tenancy agreement has been provided to the Association and contains a statement that the Tenant is subject to this Declaration.

“Use Restrictions”: The use restrictions, rules and regulations governing the use of and activities on the Lots set forth in Exhibit C in accordance with Article III hereof.

## **B. CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*The standards for use and conduct, maintenance and design at Summerwind Plantation are what give the community its identity and make it a place that people want to call “home.” This Declaration establishes procedures for adopting, modifying, applying and enforcing such standards while providing the flexibility for community standards to evolve as the Community changes and grows.*

### Article III Restrictions Affecting Lots

#### 3.1 Restrictions Affecting Occupancy and Alienation.

(a) Restrictions Occupancy for the Neighborhood of Harvest at Summerwind Plantation. Subject to the rights reserved by Declarant in Section 12.15 hereof, the Lots in the Neighborhood of Harvest at Summerwind Plantation are intended for the housing of persons 55 years of age or older. The provisions of this Section 3.1(a) are intended to be consistent with, and are set forth in order to comply with, the Housing Act. The Association, acting through the Board or Declarant shall have the power to amend this Section without the consent of the Members or any Person except Declarant for the purpose of maintaining the age restriction in a manner consistent with the Housing Act, the regulations adopted pursuant thereto and any related judicial decisions in order to maintain the intent and enforceability of this Section.

(i) Each occupied Dwelling Unit shall at all times be Occupied by at least one person 55 years of age or older; however, in the event of the death of a person who was the sole Occupant 55 years of age or older of a Dwelling Unit, any Qualified Occupant may continue to Occupy the same Dwelling Unit, as long as the provisions of the Housing Act are not violated by such occupancy.

(ii) No person under the age of 19 shall Occupy a Dwelling Unit.

(iii) Nothing in this Section shall restrict the ownership of or transfer of title to any Lot, provided no Owner under the age of 55 may Occupy a Dwelling Unit, except in compliance with this Section, nor shall any Owner permit Occupancy of a Dwelling Unit in violation of this Section. Any Owner who proposes to enter into a lease or other occupancy agreement or any agreement of sale relating to the Owner's Lot or Dwelling Unit shall: (i) assure that any such agreement is in writing, (ii) include in such agreement a statement in conspicuous type that the Lots within the Community are intended for residency by persons 55 years of age or older, as set forth in this Section 3.1, (iii) clearly disclose the Community's age-restricted purpose to any prospective tenant, purchaser or other potential occupant of the Lot and (iv) provide that any violation of Section 3.1 of this Declaration by the tenant or purchaser under the agreement shall constitute a default of the agreement.

(iv) Any Owner may request in writing that the Board make an exception to the requirements of this Section with respect to a Dwelling Unit on his or her Lot based on a hardship that is substantiated by documentation supplied with the written request. The Board may, but shall not be obligated to, grant exceptions to this Section in its sole discretion, provided that all of the requirements of the Housing Act are met in any event.

(v) In the event of any change in Occupancy of any Dwelling Unit, as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of a permanent Dwelling Unit or otherwise, the Owner of the Dwelling Unit shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the Dwelling Unit and such other information as the Board may reasonably require to verify the age of each occupant required to comply with the Housing Act. In the event that an Owner fails to notify the Board and provide all required information

within ten (10) days after a change in occupancy occurs, the Association may levy monetary fines against the Owner and the Lot for each day after the change in Occupancy occurs until the Association receives the required notice and information, regardless of whether the occupants continue to meet the requirements of this Article, in addition to all other remedies available to the Association under this Declaration and North Carolina law.

(vi) The Association shall be responsible for maintaining records to support and demonstrate compliance with the Housing Act. The Board shall adopt policies, procedures and rules to monitor and maintain compliance with this Section and the Housing Act, including policies regarding visitors, updating of age records, the granting of exemptions to compliance and enforcement. The Association shall periodically distribute such policies, procedures and rules to the Owners and make copies available to Owners or Tenants and Mortgagees upon reasonable request.

The Association, acting through the Board, may enforce this Section 3.1 in any legal or equitable manner available, as the Board deems appropriate including, without limitation, conducting a census of the occupants of Dwelling Units, requiring that copies of birth certificates or other proof of age for one new Age-Qualified Occupant per Dwelling Unit be provided to the Board on a periodic basis, and in the Board's sole discretion, taking action to evict the occupants of any Dwelling Unit which does not comply with the requirements and restrictions of this Section. Association's records regarding individual members shall be maintained on a confidential basis and shall not be disclosed except as legally required and then only to governing authorities having jurisdiction and seeking to enforce the Housing Act. Each Owner shall fully and truthfully respond to any request from the Association or Board for information regarding the occupancy of Dwelling Units on his or her Lot which, in the Board's judgment, is reasonably necessary to monitor compliance with this Section. **Each Owner hereby appoints the Association, which may act through the Board, as its attorney-in-fact for the purpose of taking legal or equitable action to dispossess, evict or otherwise remove the occupants of any Dwelling Unit on his or her Lot as necessary to enforce compliance with this Section.**

Each Owner shall be responsible for ensuring compliance with the requirements and restrictions of this Section and the Association rules adopted hereunder, by itself and by its Tenants and any other occupants of its Lot(s).

**Each Owner, by acceptance of title to a Lot, agrees to indemnify, defend and hold Declarant, any affiliate of Declarant and the Association harmless from any and all claims, losses, damages and causes of action which may arise from failure of such Owner to uphold the obligation set forth in the foregoing sentence. Such defense costs shall include, but not be limited to, attorney's fees and costs.**

**These restrictions shall apply only to Lots in the Neighborhood of Harvest at Summerwind Plantation as governed by the Neighborhood Declaration of Protective Covenants for the Harvest at Summerwind Plantation recorded in Book 3509, Page 707, Johnston County Registry.**

(b) Residential and Related Uses. The Community shall be used only in compliance with applicable zoning, and then only for residential, recreational and related purposes. Related purposes may include, without limitation, offices for the Association or its management agent(s), Declarant's business or sales offices, and any business use which meets the conditions of Section

3.1(d) below. In addition, the Association or Declarant may permit limited business activity within the confines of a Dwelling Unit that does not detract from the Community's residential and recreational character, provided the same complies with applicable zoning. Supplemental Declarations or any other Recorded covenants may impose stricter standards than those contained in this Article, or, in accordance with Section 6.4(a) hereof, Supplemental Declarations or any other Recorded covenants may impose different standards from those contained in this Article, and the Association shall have standing and the power to enforce such standards.

(c) Recreational Use. Recreational Use shall include, without limitation, the use of any Recreational Facilities, including without limitation, club meetings, classes, seminars, social gatherings, lessons and other events and programs thereon.

(d) Business Use. No business shall be conducted in or from any Lot, except that an Owner or a Resident of the Lot may conduct business activities within the Dwelling Unit so long as:

(i) the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit;

(ii) the business activity complies with applicable zoning requirements;

(iii) the business activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers or other business invitees or door-to-door solicitation within the Community; and

(iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Community, as determined by the Board in its sole discretion.

(e) The term "Business", as used in subsections (c) and (d) hereof, shall be given its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the provider and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (A) such activity is engaged in full or part time, (B) such activity is intended to or does generate a profit or (C) a license is required. Leasing a Dwelling Unit for a period of at least six (6) months and in compliance with other leasing requirements set forth in this Declaration is not a "business" within the meaning of this subsection.

This Article shall not be construed to restrict Declarant's activities in the Community, nor shall it restrict the activities of Persons approved by Declarant involved with the development and sale of property in the Community. Additionally, this Article shall not apply to any Association activity relating to operating and maintaining the Community, including the Community's Recreational Facilities and other amenities, which may be used and operated in accordance with the terms of this Declaration.

(f) Leasing. For purposes of this Declaration, "leasing" is defined as regular, exclusive occupancy of a Dwelling Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity

or compensation. A Lot may be leased only in its entirety (*e.g.*, separate rooms within the same Dwelling Unit may not be separately leased). No fraction or portion of a Lot may be leased.

No structure on a Lot other than the primary Dwelling Unit shall be leased or otherwise occupied for residential purposes, except that structures approved by Declarant or the Architectural Review Committee in accordance with the terms hereof and used for ancillary purposes, such as an "in-law suite", may be occupied but not independently leased. There shall be no subleasing of a Dwelling Unit or assignment of leases, except with the Board's prior written approval.

**All leases shall require that tenants and all occupants of the leased Lot are bound by and obligated to comply with this Declaration, the Governing Documents. The restrictions on leasing set forth in the foregoing sentence shall not apply to Declarant.**

Notice of any lease, together with such additional information as the Board may require, shall be given to the Board or its designee by the Owner within ten (10) days of execution of the lease. The Owner must make available to the tenant copies of the Governing Documents and the Master Declaration. The Board may adopt reasonable Use Restrictions and additional rules regulating leasing and subleasing and the activities of tenants and subtenants.

**No transient tenants may be accommodated in a Dwelling Unit. All leases, including subleases, shall be in writing and shall be for an initial term of at least six (6) months, except: (a) with the Board's prior written consent or (b) as Declarant initially authorizes in a Supplemental Declaration for Lots located within certain Neighborhoods.**

(g) Maximum Occupancy. No more than two (2) Persons per bedroom shall occupy the same Dwelling Unit on a regular and consistent basis, as determined by the Board in its discretion.

(h) Occupants Bound. This Declaration, the Governing Documents and the Master Declaration apply to all Occupants of and visitors to any Lot. Every Owner shall cause anyone occupying or visiting his or her Lot to comply with the Governing Documents and the Master Declaration and shall be responsible for all violations and losses to the Common Area caused by such Persons, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.

(i) Subdivision of a Lot and Time-Sharing. Lots may not be subdivided or their boundary lines changed except in accordance with all applicable laws and with the Bond's prior written approval; provided, however, Declarant, in its sole discretion, may subdivide, change the boundary line of and replat any Lot(s) it owns, and, for so long as Declarant owns any portion of the Community, Declarant may convert Lots into Common Area or Common Area to Lots at any time prior to the transfer of title to such property to third parties or to the Association.

Time-sharing, fraction-sharing or similar programs, whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years is prohibited, except by Declarant, while Declarant owns any property within the Community.

(j) Disease and Insects. No Person shall permit any thing or condition to exist upon any Lot, Parcel or other property which shall induce, breed or harbor infectious diseases or noxious insects.

(k) Mineral Exploration. No Lot, Parcel or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind, except for the drilling, operation and maintenance of any testing, inspection or other water wells approved by Declarant.

(l) Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals shall be erected, placed or maintained anywhere in or upon any Lot, Parcel or other property by anyone other than Declarant or a Person acting on behalf of Declarant unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures for emergency purposes or incident to the construction of buildings or structures approved by the Architectural Review Committee. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls exposed to view from a street in order to comply with any requirements, regulations, orders, conditions or specifications of any public, quasi-public or private utility or any governmental agency or body, provided that reasonable efforts shall be made to avoid placing any such meter, panel or other equipment on the outside front wall of a Dwelling Unit or other building facing the street running directly in front of a Dwelling Unit.

(m) Model Homes. Any provisions of this Declaration, Supplemental Declarations or any other declarations which prohibit non-residential use of Lots and certain Parcels and regulate parking of vehicles shall not be construed to prohibit the construction and maintenance of model homes or other model Dwelling Units of any kind (including, without limitation, any used in whole or in part as sales offices, or for design center displays (collectively "Models") by Declarant in the Community, or parking incidental to the visiting of Models, so long as the construction, operation and maintenance of Models and the incidental parking otherwise comply with the provisions of this Declaration. The Architectural Review Committee may also permit Lots, Common Areas and other areas to be used for parking in connection with the showing of Models.

(n) Incidental Uses. The Architectural Review Committee may approve uses of property within a land use classification which are secondary to the full enjoyment of the land use classification by Owners and Occupants. Such approval may be subject to such regulations, limitations and restrictions, including termination of the approved use, as the Architectural Committee may wish to impose, in its sole discretion, for the benefit of Summerwind Plantation as a whole.

### 3.2 Framework for Regulation.

In addition to the foregoing restrictions affecting Lots, the Governing Documents establish, as part of the general plan of development, a framework of affirmative and negative covenants, easements and restrictions which govern the Community, including the Use Restrictions. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes affecting the Community. This Article establishes procedures for modifying and expanding the Use Restrictions to respond to such changes.

The procedures set forth in this Article shall not apply to the Board's enactment and

enforcement of rules and regulations relating to use and operation of the Common Area or other administrative rules, which the Board may adopt by resolution.

### 3.3 Owners' Acknowledgment and Notice to Purchaser.

All Owners are hereby given notice that use of their Lots and the Common Area is limited by the Use Restrictions, as the same may be amended, expanded and otherwise modified from time to time. Each Owner, by accepting a deed, each Tenant, by accepting a lease, and each Occupant, by accepting possession, acknowledges and agrees that the use, enjoyment and marketability of his or her Lot can be affected by the Use Restrictions and Board Resolutions and Rules, which may change from time to time. All purchasers of Lots are hereby put on notice that the Association may have adopted amendments to the Use Restrictions and that such amendments may not be set forth in a Recorded document. The Association shall make available copies of the Use Restrictions and Board Resolutions and Rules currently in effect.

### 3.4 Rule-Making Authority.

(a) The Board may change (*i.e.*, modify, cancel, limit, create exceptions to or expand) the Use Restrictions from time to time. The exercise of this authority shall be subject to the Board's obligations as set forth in the By-laws and Articles and to the need to make as few changes to the Use Restrictions as possible to meet the Board's objectives and still fulfill the reasonable expectations of the Members. The Board shall provide notice to all Owners of any proposed change to the Use Restrictions pursuant to the Association's then-current communication policy at least five (5) business days before the Board meeting at which such changes will be considered. Members shall have a reasonable opportunity to be heard on the proposed change at such Board meeting.

If endorsed by the Board, the proposed change shall be approved unless it is rejected by a majority vote of the Members. The Board is not obligated to call a meeting to reconsider any rejection of a change unless it receives a petition to do so that meets the requirements for special meetings set forth in the By-Laws. If the Board receives such a petition before the effective date of the Board's action under this Subsection, the proposed change shall not become effective until after the second meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, the Members, representing a majority of the votes in the Association, at an Association meeting duly called for such purpose, may vote to change the Use Restrictions then in effect. During the Declarant Control Period, any such change shall require the approval of Declarant.

(c) Before any Use Restriction change can become effective, the Board shall provide to each Owner, free of charge, a copy of the new or changed Use Restriction. The change shall not become effective until at least thirty (30) days following the date of such mailing to all Owners. Each Owner shall be bound regardless of whether the mailing is actually received. The Association shall provide, free of charge, a copy of the Use Restrictions then in effect to any Member, Tenant or Mortgagee requesting the same.

(d) At least once every two (2) years after the Declarant Control Period ends, the Board shall review and evaluate the then-current Use Restrictions for continued viability or necessity within the Community.

(e) No action taken under this Article shall have the effect of modifying, repealing or expanding the Design Guidelines or any provision of this Declaration other than the Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

(f) Notice under this Section may be sent to each Owner by any manner permitted under the Association's then-current communication policy and North Carolina law, including, if so permitted: (i) U.S. Mail, (ii) electronic communication (*i.e.*, "fax" or "e-mail") or (iii) publication in the community newsletter delivered or mailed to each Owner, provided such action is clearly identified under a separate newsletter headline.

### 3.5 Protection of Members and Residents.

Except as may be set forth in this Declaration (either initially or by amendment) or in the Use Restrictions, the Association's actions with respect to Use Restrictions and rules must comply with the following:

(a) Displays. Members and Residents shall be permitted to display religious, patriotic and holiday signs, symbols and decorations on their Lots of the kinds normally displayed in single-family residential neighborhoods, provided that the Association may regulate all such displays for conformity with this Declaration and, specifically, with the Community-Wide Standard.

(b) Signs. The Association shall not regulate the content of political signs; however, the Association may adopt reasonable time, place and manner restrictions regarding the posting of such signs, as established in the Design Guidelines. Regulations concerning all other signs may be contained in the Use Restrictions or the Design Guidelines, as the same may be amended from time to time.

(c) Rights of Assembly. Members and Residents shall be permitted to engage in orderly conduct to express opinions to the membership at large, but only in accordance with the Association's approved Assembly Policy.

(d) Household Composition. The Association shall not interfere with the freedom of Members and Residents to determine the number of Qualified Occupants within a household, except that it may limit the total number of Persons entitled to occupy a Dwelling Unit based upon the size of the Dwelling Unit (including, without limitation, such factors as the number of bedrooms), not to exceed the number of occupants permitted under applicable zoning ordinances, and it may limit the number of Occupants per household who have full privileges to use the Common Area.

(e) Activities Within Dwellings. The Association shall not interfere with activities carried on within a Dwelling Unit, except it may prohibit activities not normally associated with residential property uses, and it may restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the Dwelling Unit or that create an unreasonable source of annoyance.

(f) Alienation. The Association shall not prohibit leasing or transfer of any Lot except in accordance with the Governing Documents. The Association may



require that Owners use Association-approved lease forms (or include specific lease terms) and may impose a reasonable administrative fee for review of a lease or a transfer of any Lot. (See Section 3.1(e) for minimum lease terms established hereunder).

(g) Abridging Existing Rights. The Association may not require an Owner to dispose of personal property that was in or on a Lot in compliance with rules previously enacted with respect to the Lot. This exemption shall apply only during the period of such Owner's ownership of the Lot, and shall not apply to subsequent Owners who take title to the Lot after adoption of a different rule.

(h) Reasonable Rights to Develop. The Association may not unreasonably impede Declarant's right to develop Summerwind Plantation, or require Declarant to develop any portion thereof, with all development decisions being left to Declarant's sole discretion.

The limitations in subsections (a) through (h) of this Section shall only limit rule-making authority exercised under Section 3.4 of this Declaration; they shall not apply to amendments to this Declaration adopted in accordance with Article XXI hereof.

#### **Article IV Architecture and Landscaping**

##### **4.1 General.**

No structure or thing shall be placed, erected or installed upon any Lot, and no Improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations or planting or removal of landscaping) shall take place within Summerwind Plantation, except in compliance with this Article and the Design Guidelines. Each Dwelling Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee, in its sole discretion, otherwise approves.

Any Owner may remodel, paint or redecorate the interior of an Improvement (including a Dwelling Unit) on his or her Lot without approval. However, modifications to the interior of screened porches, patios and any other portions of a Lot visible from outside an Improvement shall be subject to approval as set forth in the Design Guidelines.

This Article shall not apply to Declarant's activities or to the Association's activities during the Declarant Control Period.

##### **4.2 Architectural Review.**

(a) *By Declarant; New Construction.* Declarant shall have exclusive authority under this Declaration to administer and enforce architectural controls and to review and act upon all applications for original construction within the Community. This right shall continue until one hundred percent (100%) of the Lots have been conveyed to Members, other than Declarant or the Association, and each such Lot contains a finished Dwelling Unit, unless Declarant earlier terminates its rights in a Recorded instrument. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other Person.

Declarant may, in its discretion, designate one or more Persons or an outside management company to act on its behalf from time to time in reviewing applications.

From time to time, Declarant may, but shall not be obligated to, delegate or assign all or any portion of its rights under this Article to any other Person or committee, including the Architectural Review Committee. Any such delegation shall be in writing, specifying the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) *Architectural Review Committee; Modifications.* During the Declarant Control Period, Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for modifications to Improvements constructed within the Community. Declarant is to maintain Records of all approvals and denials and to turn them over to the Association at the end of the Declarant Control Period. Prior to termination of Declarant's rights under Section 4.2(a) hereof or to further a delegation if requested by Declarant, the Board shall establish the ARC, which shall consist of at least three (3) Persons. Members of the ARC shall be appointed and shall serve at the discretion of the Board; provided, however, that so long as and at any time that Declarant owns any property described in Exhibit A or Exhibit B, as the same may be amended from time to time, Declarant may appoint one member of the ARC.

When appointed, the ARC shall have exclusive jurisdiction hereunder over modifications to all Lots and/or structures and any additional Improvements within the Community, subject to Declarant's rights under Subsection (a) above. Declarant, in its discretion, may assign jurisdiction over original construction and landscaping within the Community to the ARC.

Declarant or the Board may create and appoint such subcommittees of the ARC as the same deem appropriate. Such subcommittees may be established to preside over particular areas of review (e.g., landscape plans) and shall be governed by such procedures as may be established by the ARC or the Board. Any action of any subcommittee shall be subject to the review and approval of the ARC and, during the Declarant Control Period, Declarant. Notwithstanding the above, neither the ARC nor Declarant shall be obligated to review all actions of any subcommittees and the failure of the same to take action in any instance shall not operate as a waiver of ARC's or Declarant's right to act, or not act, in the future.

(c) *Reviewer.* The entity having jurisdiction in a particular case (whether it be Declarant or its designees or the ARC) shall be referred to as the "Reviewer". On behalf of the Association, the Reviewer may retain architects, engineers or other Persons as deemed necessary to perform a review. The cost will be the responsibility of the applicant.

(d) *Fees; Assistance.* The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Board shall include the estimated compensation of such Persons in the Association's annual operating budget.

(e) *Master Declaration.* Nothing herein alters or shall be deemed to alter any architectural approval provisions or requirements applicable to the Community by virtue of the Master Declaration.

#### 4.3 Guidelines and Procedures.

(a) *Design Guidelines.* Declarant shall prepare Design Guidelines, which may contain general provisions applicable to all of the Community as well as specific provisions which may vary from Neighborhood to Neighborhood. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Community or has a unilateral right to annex Additional Property pursuant to Section 11.1 hereof. Declarant's right to amend shall continue notwithstanding a delegation of reviewing authority to the ARC, unless Declarant also delegates to the ARC its power to amend. Upon termination or delegation of Declarant's right to amend, the ARC may amend the Design Guidelines with the written consent of the Board.

Amendments to the Design Guidelines shall be prospective only. The Design Guidelines shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced in compliance with applicable laws and ordinances. Subject to the Community-Wide Standard, there shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners who seek to engage in construction within Summerwind Plantation.

(b) *Custom Lot Guidelines.* Declarant may prepare Custom Lot Guidelines, if Declarant elects to sell custom lots within the Community. It may follow the same procedures as apply to the Design Guidelines, or it may establish new procedures.

(c) *Procedures.* Except as otherwise specifically provided in the Design Guidelines, no construction activities or other activities described in Section 4.1 hereof shall commence on any portion of Summerwind Plantation until an application has been submitted to and approved by the Reviewer. The application shall (i) be in the form Reviewer requires, (ii) include plans and specifications and other information required under the Design Guidelines and (iii) be approved in writing, at the time of submission, by the Owners of the Lots adjacent to the applicant's Lot. Plans and specifications shall show, as applicable site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation and other features of the proposed construction. The Design Guidelines and the Reviewer may require additional information as reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective, and opinions may vary as to the desirability and/or attractiveness of particular Improvements. Subject to Declarant's veto right, the Reviewer shall have the sole discretion to make final, conclusive and binding determinations on matters of aesthetic judgment, and such determinations shall only be subject to review or appeal to the Board on the issue of good faith and in accordance with the required procedures.

The Reviewer shall make a determination on each application within 45 days after receipt of a completed application and all information it requires. The Reviewer may permit or require

that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions, with or without conditions or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of a final determination on any application within five (5) days after such determination is made. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

If the Reviewer fails to respond by the deadlines set forth above, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 45 hereof.

Notice shall be deemed given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed given at the time of delivery to the applicant.

As part of any approval, the Reviewer may require that construction commence in accordance with approved plans within a specified time period. If construction does not commence within the required period, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement, unless otherwise specified in the notice of approval or the Design Guidelines or unless the Reviewer grants an extension in writing, which it is not obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

(d) *Exemptions.* The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Reviewer approval shall not constitute approval of or waiver of approvals or review by Johnston County or any applicable municipality, by the State of North Carolina or any other governmental agency or entity having jurisdiction over architectural or construction matters.

#### 4.4 No Waiver of Future Approvals.

Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the Improvements involved. Accordingly, a Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a waiver of the right to withhold approval as to any similar applications, plans or other matters subsequently or additionally submitted for approval.

#### 4.5 Variances.

The Reviewer may authorize variances from compliance with any of the guidelines and procedures set forth in this Declaration or in the Design Guidelines when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require or when legally required for compliance with the Americans with Disabilities Act, but only in accordance with rules and regulations established by Declarant or ARC. No application for variance from compliance with any of the guidelines and procedures set forth in this Declaration or in the Design Guidelines shall be considered for approval unless the Owner submitting or authorizing the submission of such application submits written acknowledgements with such application signed by each Owner of a Lot abutting the applying Owner's Lot, which acknowledge receipt of a copy of the application and receipt of contact information for the Reviewer. No variance shall (a) be effective unless in writing, (b) be contrary to this Declaration or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of any financing shall not be considered a hardship warranting a variance. No variance may be issued without Declarant's written consent for so long as Declarant owns any portion of the Community or has the unilateral right to annex Additional Property.

#### 4.6 Limitation of Liability.

(a) The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Summerwind Plantation; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for ensuring compliance with building codes and other governmental requirements or for ensuring that every Dwelling Unit is of comparable quality, value or size, of similar design or aesthetically pleasing or otherwise acceptable to other Owners provided the Community-Wide Standards shall serve as a guide in the review process.

(b) Declarant, the Association, its officers, the Board, the ARC, the Association's management agent, any committee or any member of any of the foregoing shall not be held liable for matters related to its decisions including, but not limited to, soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in the Community; or any injury, damages or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Board, the ARC, the members of each and the Association officers, shall be defended and indemnified by the Association as provided in Section 7.7 hereof.

#### 4.7 Certificate of Compliance.

Declarant or any Owner may request in writing that the Association issue a certificate of architectural compliance certifying either that there are no known violations of this Article or the Design Guidelines as to the Owner's Lot or specifying such violations. The Association may charge a reasonable administrative fee in connection with responding to such a request. The Association shall either issue such a certificate within 45 days after receipt of the written request therefor, or a certificate specifying no violations shall be deemed to have been issued. Issuance of such a certificate shall estop the Association from taking enforcement action against an Owner for any condition known to the Association on the date of the certificate and not specified therein.

## **Article V Landscaping, Home Maintenance and Repair**

### 5.1 [Intentionally Omitted]

### 5.2 Maintenance of Lots.

Each Owner shall maintain its Lot, including the Dwelling Unit and all other Improvements situated on or in the Lot, in a manner consistent with the Governing Documents, the Master Declaration, the Community-Wide Standard and any other applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or additional covenants applicable to such Lot.

Each Owner shall also be responsible for maintaining the sidewalk and landscaping located in the private street right-of-way adjacent to his or her Lot unless the Association or a Neighborhood Association, pursuant to a Supplemental Declaration or any additional covenants, assumes all or part of such maintenance.

### 5.3 Maintenance of Neighborhood Property

Upon Board resolution, Owners within a Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Common Area within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Neighborhood and adjacent private streets within the Neighborhood and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, if, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

### 5.4 Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or the Master Declaration or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable Improvements on his or her Lot, less a reasonable deductible, unless the Association carries such insurance (which it may, but is not obligated to do). If the Association assumes responsibility for insuring a Lot, the insurance premiums shall be levied as a Benefited Assessment against the benefited Lot and its Owner.

In the event of damage to or destruction of Improvements on a Lot, the Owner shall promptly repair or reconstruct such structure in a manner consistent with the original construction

or other plans and specifications approved in accordance with Article IV hereof. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

Additional Recorded covenants applicable to any Neighborhood may establish requirements for insurance and standards for rebuilding or reconstructing structures on the Lots within the Neighborhood and for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed, any of which may be more strict than the standards set forth herein; provided, however, if written consent to the Neighborhood covenants is obtained in accordance with Section 6.4(a) hereof, then provisions of the Neighborhood covenants may differ from the standards set forth herein.

## **C. COMMUNITY GOVERNANCE AND ADMINISTRATION**

*This Declaration establishes the Association as the mechanism by which each Owner is able to participate in the governance and administration of Summerwind Plantation. While many powers and responsibilities are vested in the Association's Board of Directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's Membership — the Lot Owners.*

### **Article VI The Association and its Members**

#### **6.1 Function of Association.**

The Association is responsible for the management, maintenance, operation and control of the Common Area, subject to any covenants, easements or restrictions set forth in the deed or other instrument transferring the property to the Association. The Association may choose to oversee the administration of certain social programs for the benefit of the Owners and, in so doing, may hire a lifestyle director and additional staff for the administration of such programs, either as employees or as independent contractors. The Association also has primary responsibility for enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and North Carolina law.

#### **6.2 Membership.**

Every Owner is a Member of the Association, but there shall be no more than one Membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of Membership, subject to the By-Laws, reasonable Board Regulations and Rules and the voting restrictions described in Section 6.3(c) hereof. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The Membership rights of an Owner that is not an individual may be exercised by any officer, director, partner, manager, member or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Association's Secretary.

#### **6.3 Voting.**

(a) *Voting Matters.* During the Declarant Control Period or during such time as Declarant owns any of the Community or has a unilateral right to annex Additional Property pursuant to Section 11.1 hereof, the only matters subject to a vote of all the Members in the Community or by one or more Neighborhoods are those which the Declarant wishes to put to a Community-Wide or Neighborhood vote, as applicable. The foregoing sentence shall not relieve

the Declarant or the Association, as the case may be, of the obligation to provide budget summaries to the Owners following adoption of a proposed budget and to hold a meeting for the purpose of obtaining a ratification vote on the proposed budget, as required by the Act.

(b) *Members.* Members shall have one (1) equal vote for each Lot in which they hold the interest required for Membership under Section 6.2 hereof, except that there shall be only one (1) vote per Lot. The right to vote for a Lot commences at such time as the Lot is made subject to this Declaration; provided, no vote shall be exercised for any Lot which is exempt from Assessment under Section 9.10 hereof.

(c) *Exercise of Voting Rights.* The Owner shall exercise the vote for its Lot. If there is more than one (1) Owner of a Lot, the vote for such Lot shall be exercised as the Co-Owners determine among themselves and advise the Association's Secretary, or its designee in writing prior to the vote being taken. Absent such advice and in the event that more than one such Co-Owner casts a vote, the Lot's vote shall be suspended and excluded from the final vote tally on the matter on which a vote is being taken.

#### 6.4 Neighborhoods and Neighborhood Representatives.

(a) *Neighborhoods.* Every Lot shall be located within a Neighborhood. Unless and until additional Neighborhoods are established by Declarant, the Community shall consist of a single Neighborhood. Lots within a particular Neighborhood may be subject to covenants in addition to those set forth in this Declaration, provided, however, that a Neighborhood Declaration may initially contain, or be amended to contain, provisions different from or in contravention of provisions in this Declaration, as long as (a) during the Declarant Control Period, the written consent of Declarant to the different provisions is indicated on such Neighborhood Declaration or amendment, as applicable and (b) after the Declarant Control Period, the written consent of a majority of the Board to the different provisions is indicated on such Neighborhood Declaration or amendment, as applicable. If a Neighborhood Declaration or an amendment thereto is executed by Declarant, the separate consent required in the foregoing sentence shall not be necessary.

Exhibit A to this Declaration, any Supplemental Declaration and any Plat may assign property to a specific new or existing Neighborhood (by name or other identifying designation). So long as it has the unilateral right to annex Additional Property into the Community pursuant to Section 11.1 hereof, Declarant may unilaterally Record a Supplemental Declaration or amend this Declaration or any Supplemental Declaration to create Neighborhoods, re-designate Neighborhood boundaries or combine two (2) or more existing Neighborhoods. Thereafter, the Board may amend this Declaration or any Supplemental Declaration to re-designate Neighborhood boundaries; provided, it may not combine two (2) or more existing Neighborhoods without the consent of Owners of a majority of the Lots in the affected Neighborhoods.

Owners within any Neighborhood may request that the Association provide a different level of service than the Association generally provides to Neighborhoods or may request that the Association provide special services for the benefit of Lots in such Neighborhood. Upon the affirmative vote, written consent or a combination thereof of Owners of a majority of the Lots within the Neighborhood, the Association shall provide the requested services, subject to Board approval. In addition, the Association may provide a different level of or special services to any Neighborhood in accordance with a Supplemental Declaration, or if deemed necessary or appropriate by the Board, in its discretion. The Board shall assess the cost of such services, which may include a reasonable administrative charge in such amount as the Board deems



appropriate, against the Lots within such Neighborhood as a Neighborhood Assessment; provided, however, any such administrative charge shall apply at the same rate per Lot to all Neighborhoods receiving the same service.

(b) *Neighborhood Representatives.* If more than one Neighborhood is established, then each Neighborhood shall elect a Neighborhood Representative who shall preside over Neighborhood meetings for a defined term, as established by the Board and shall be responsible for communication between the Owners in the Neighborhood and the Board. Neighborhood Representatives also shall attend Neighborhood Representative meetings when requested by the Board. In addition, each Neighborhood shall elect an alternate Neighborhood Representative who shall act in the absence of the Neighborhood Representative. The Neighborhood Representative and alternate Neighborhood Representative shall be Owners in good standing of a Lot in the Neighborhood they represent.

If applicable, Declarant shall appoint the initial Neighborhood Representatives no later than at such time as twenty-five percent (25%) of the Lots anticipated for the Community under the Summerwind Plantation Plan have been conveyed to Members; provided, a Neighborhood Representative need not be appointed for any particular Neighborhood prior to the time that twenty-five percent (25%) of the Lots anticipated for such Neighborhood under the Summerwind Plantation Plan have been conveyed to Members. After the term expires for Declarant's initial appointment for a Neighborhood, the Board shall call for an election of a Neighborhood Representative and an alternate from such Neighborhood on an annual basis, either by written ballots cast by mail, computer or at a meeting of the Members within the Neighborhood, as the Board determines. Candidates for election as Neighborhood Representatives may be nominated by the Board, a nominating committee which the Board may appoint or from the floor at any meeting at which such election is to be held.

The presence, in person or by proxy, or the filing of ballots by Members representing at least twenty-five percent (25%) of the total votes attributable to Lots in the Neighborhood shall constitute a quorum at any Neighborhood meeting or election. In the event of a failure to obtain a quorum or vacancy in such positions for any Neighborhood, the Board may appoint a Neighborhood Representative or alternate Neighborhood Representative to represent the Neighborhood until a successor is elected.

For any Neighborhood election, each Member shall have one (1) equal vote for each Lot the Member owns in the Neighborhood. The candidate who receives the greatest number of votes shall be elected as the Neighborhood Representative, and the candidate receiving the next greatest number of votes shall be elected as the alternate Neighborhood Representative. The Neighborhood Representative and the alternate Neighborhood Representative shall serve until their successors are elected.

Any Neighborhood Representative or Alternate Neighborhood Representative may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the Lots owned by Members in the applicable Neighborhood.

## **Article VII Association Powers and Responsibilities**

### **7.1 Acceptance and Control of Association Property.**

(a) The Association, through action of its Board, may acquire, hold, lease (as landlord or tenant), operate and dispose of tangible and intangible personal property and real

property. Contracts for terms in excess of one (1) year shall require a majority vote of the Members. The Association may enter into leases, licenses or operating agreements for portions of the Common Area, for payment or no payment as the Board deems appropriate, to permit use of portions of the Common Area by community organizations and by other third parties for the general benefit of or as a convenience to Owners and other residents of Summerwind Plantation. A conveyance or mortgage of the Common Area requires eighty percent (80%) approval of the Members. A conveyance or mortgage of the Limited Common Area requires one hundred percent (100%) approval of the Members.

(b) Declarant and its designees may transfer or convey to the Association, and the Association shall accept, rights Declarant has in and to personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described in Exhibit A or Exhibit B. Upon Declarant's written request, the Association shall transfer back to Declarant any unimproved portions of the Common Area originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation and control of the Common Area, subject to any covenants, easements or restrictions set forth in the deed or other instrument transferring the property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

#### 7.2 Maintenance of Common Area.

The Association shall maintain, in accordance with the Community-Wide Standard, the Common Area, and such maintenance shall include, but need not be limited to:

(a) all portions of the Common Area, including landscaping, structures and other Improvements thereon or therein;

(b) landscaping within public or private street rights-of-way within or abutting Summerwind Plantation;

(c) such portions of any additional property as may be dictated by Declarant, the Master Declaration, this Declaration any Supplemental Declaration, any Plat or any contract, covenant or agreement for maintenance entered into by, or for the benefit of the Association;

(d) all ponds, streams and/or wetlands located within Summerwind Plantation that serve as part of the Community's stormwater drainage system, including associated improvements and equipment;

(e) all underground infiltration trenching devices, structures and areas which serve as part of the Community's stormwater drainage system; and

(f) all private streets, golf cart paths, walking or running trails and any other area intended to provide ingress, egress and access to, from and throughout the entire Community benefiting all Neighborhoods or Owners, as more particularly described in Article XI(b) hereof, unless such area has been designated as limited common area under a supplemental declaration or additional restrictive covenants.

The Association may maintain other property that it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own.

The Association shall maintain the facilities and equipment within the Common Area in continuous operation, except for any periods necessary to perform required maintenance or repairs, as determined by the Board in its sole discretion, unless and until Members representing seventy-five percent (75%) of the Member votes in the Association, and Declarant, if during the Declarant Control Period, agree in writing to discontinue such operation.

Except as provided above, the Common Area shall not be reduced or increased except with Declarant's prior written approval during the Declarant Control Period, or for so long as Declarant owns any part of the Community or has the unilateral right to annex Additional Property into the Community pursuant to Section 11.1 hereof.

The costs incurred by the Association in connection with the maintenance, repair and replacement of the Common Area, excluding Limited Common Areas, shall be a Common Expense; provided, the Association may, but shall not be obligated to, seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Area pursuant to this Declaration, a Supplemental Declaration or other Recorded covenants or agreements. Maintenance, repair and replacement of Limited Common Areas shall be a Neighborhood Expense assessed against the Lots within the benefited Neighborhood(s).

### 7.3 Insurance.

(a) *Required Coverages.* The Association, acting through the Board or an agent duly authorized by the Board, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "all risks of direct physical loss" on a "special causes of loss form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within other portions of the Common Area to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad causes of loss form" (specified perils) coverage may be substituted. All Association property insurance policies shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Common Area, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees or agents while acting on behalf of the Association, and if generally available at a reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$5,000,000.00 per occurrence and in the aggregate with respect to bodily injury, personal injury, and property damage;

- (iii) With respect to any contractors working on the Common Area or any third parties holding events on the Common Area, all such individuals shall be required to carry sufficient similar commercial general liability insurance with minimum limits of \$1,000,000.00 combined single limit per occurrence and \$1,000,000.00 general aggregate limit, and shall be endorsed to include Summerwind Plantation, LLC, and its respective managers, members, employees and agents as additional insureds with respect to any claims, losses, expenses or other costs arising out of any work performed for Summerwind Plantation;
- (iv) Statutory Workers' Compensation and employer's liability insurance in the amount of the State of North Carolina's statutory limits to cover all employees engaged in the services;
- (v) Earthquake, wind and flood damage coverage, of and to the extent required by law and or appropriate for an Association based in North Carolina;
- (vi) Automobile liability insurance for all owned, non-owned and hired vehicles with a minimum limit of \$500,000.00 combined single limit per accident;
- (vii) Directors' and officers' liability coverage; and
- (viii) Commercial crime insurance covering all Persons, including Persons serving without compensation, responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Lots plus reserves on hand.

Any parties, other than the Association, required by the Subsections (a)(i), (a)(ii) and (a)(iii) above to carry certain insurance, shall file with the Association certificates of insurance evidencing the minimum coverage required in such subsections at the time of execution of any agreement for services or events conducted on the Common Area and shall maintain the same insurance in a current status throughout the term of any such agreement. Such certificates of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the Association in the event of any cancellation, non-renewal or material change (*i.e.*, a greater than twenty-five percent (25%) reduction) in the policy limits, terms or conditions. Such parties shall maintain all of their insurance and at the required levels described above for not less than five (5) years following the expiration or termination of any agreement with the Association.

The Board, in the exercise of its business judgment, may obtain such additional insurance coverage and higher limits.

Insurance obtained for the Association is not meant to replace any individual's personal liability or property insurance, and it is strongly suggested that each Member of the Association carry their own personal coverage.

Premiums for insurance on the Common Area shall be Common Expenses, except that (i) premiums for property insurance on Lots within a Neighborhood shall be a Neighborhood Expense, and (ii) premiums for insurance on Limited Common Areas within a Neighborhood may be a Neighborhood Expense unless the Board reasonably determines that other treatment of the

premiums is more appropriate. All of the coverage required herein should be maintained with insurers rated AR or better in the most current edition of Best's Insurance Reports.

(b) *Policy Requirements.* Prior to the adoption of the Budget, the Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Clayton/Raleigh/Johnston County metropolitan area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member who is insured thereunder. Declarant reserves the right to satisfy its requirements to obtain and maintain insurance under Declarant's blanket policy, provided that the cost to replace the insurance when such coverage terminates shall be disclosed to the Members as a footnote to the Budget.

Insurance policies may contain a reasonable deductible which shall not be subtracted from the face amount of such policies in determining whether the policy limits satisfy the requirements of Section 7.3(a) hereof. In any event, the total amount of insurance after application of deductibles shall be not less than eighty percent (80%), or the then-current percentage required by the Act, of replacement costs, exclusive of land, excavations, and foundations, at each renewal date. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense, as applicable, in the same manner as the premiums for the applicable insurance coverage are treated. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees or tenants, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Benefited Assessment.

All insurance coverage obtained by the Board shall:

- (i) be written with a company authorized and licensed to do business in North Carolina;
- (ii) be written in the name of the Association as trustee for the benefit of the benefited parties specified in this subsection (b)(ii). Policies covering the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners within the Neighborhood and their Mortgagees, as their interests may appear;
- (iii) not be brought into contribution with insurance purchased by individual Owners, their Mortgagees, or any occupants of a Lot;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);

(vii) Unless the Board waives the requirement of this Subsection (b)(vii), it must include an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer on account of any one or more individual Owners or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(viii) include an endorsement precluding cancellation, invalidation or condition to recovery under the policy on account of any actor omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds and provide:

- (1) a waiver of subrogation as to any claims against the Association's Board, officers, employees and its manager, the Owners and their tenants, servants, agents and guests;
- (2) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (3) an endorsement requiring at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification or non-renewal;
- (4) a cross liability provision; and
- (5) a provision vesting in the Board or their authorized representative, which shall be Declarant, so long as Declarant's policy provides Association coverage, exclusive authority to adjust losses; provided, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) *Restoring Damaged Improvements.* In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least eighty percent (80%) of the total Member vote in the Association and Declarant, if during the Declarant Control Period, vote within sixty (60) days after the loss not to repair or reconstruct. If the damage is to Limited Common Area, repairs shall be made unless at least one hundred percent (100%) of the Owners that are benefited by such Limited Common Area vote not to repair or reconstruct within sixty (60) days after the loss. If either the insurance proceeds or estimates of the loss or both are not available to the Association within such sixty (60) day period, then the period shall be extended for up to sixty (60) additional days until such funds or information are available. No Mortgagees shall have the right to

participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed upon settlement, for the benefit of the Members or the Owners of Lots within the insured Neighborhood, as appropriate, and place such finds in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the applicable insurance premiums.

#### 7.4 Compliance and Enforcement.

(a) The Board may impose sanctions for Governing Documents violations, which sanctions include those listed below and any others specifically described in the Governing Documents. The Board may establish a range of penalties for different violations, with violations of this Declaration, unsafe conduct and harassment or intentionally malicious conduct treated more severely than other violations.

The following sanctions require prior notice and an opportunity for a hearing in accordance with the By-Laws (provided only a single notice and hearing is required for continuing violations) and the Act:

- (i) imposing reasonable monetary fines, not to exceed one hundred dollars (\$100.00) per violation (or per day, after the decision to impose a fine in the case of a continuing violation) or the highest amount allowed by the Act, if different, which shall constitute a lien upon the violator's Lot enforceable in the same manner in which Assessments may be enforced, subject to any limitations on enforcement imposed by the Act. Fines may be imposed within a graduated range. There is no limit on the aggregate amount of any fine for a continuing violation;
- (ii) suspending an Owner's right to vote;
- (iii) suspending any Person's right to use Common Area amenities; provided, however, nothing shall authorize the Board to impair an Owner's or occupant's access to his or her Lot;
- (iv) suspending any services of the Association;
- (v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Lot in a non-emergency situation; and
- (vi) levying Benefited Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

(b) In addition, the Board, or its designees, may take the following enforcement actions to ensure compliance with the Governing Documents without the necessity of following the procedures set forth in the By-Laws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, (1) towing vehicles that are in violation of parking rules and regulations and (2) any action necessary to protect and safeguard Common Area, any Lots, or any other property owned by any Owner or the Association as necessary based on reasonable judgment; to protect the health, safety and welfare of any Owner, their guests, licensees, tenants, employees, invitees, and/or family members, relating to any unsafe use, operation, maintenance, driving, parking or any other actions of a golf cart being operating in Summerwind Plantation. Each Owner acknowledges that such self-help mechanisms may include, but shall not be limited to, immediate ceasing the operation of any golf cart violating any rules or regulations or in any unsafe manner, and/or seizing any golf cart to prevent future operation until the violating Owner or other authorized person operating the golf cart responsible for such golf cart can be notified and a hearing conducted as to whether golf cart privileges should be either temporarily or permanently suspended in accordance with the rules and regulations promulgated by the Association relating to the operation and maintenance of golf carts.

(ii) taking other action to abate a violation on the Common Area or a violation on a Lot in an emergency situation;

(iii) exercising reasonable self-help in a non-emergency situation where a violation of this Declaration or any rules or regulations promulgated in accordance with this Declaration continues for thirty (30) days after notice of the violation is given to the violating party, or to the Owner responsible for the violating party (specifically including, but not limited to, towing vehicles that are parked in violation of applicable rules and regulations) or otherwise correcting or eliminating the violation;

(iv) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such required maintenance and assess all costs incurred against the Lot and the Owner as a Benefited Assessment. If a Neighborhood Association fails to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Benefited Assessment against all Lots within such Neighborhood. Except in an emergency situation, the Association shall provide the Owner or Neighborhood Association reasonable notice and an opportunity to cure the problem prior to taking such enforcement action. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(c) The decision to pursue enforcement in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in enforcement.



Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) the covenant, restriction or rule being enforced is, or is likely to be, construed as inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iv) that it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time or preclude the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may, but shall not be required to, enforce applicable town ordinances, and Johnston County may enforce its ordinances within Summerwind Plantation.

#### 7.5 Enforcement of Design Guidelines.

(a) Any construction, alteration or other work performed in violation of the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Association or Declarant, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure the nonconformance to the satisfaction of the requester or restore the Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association, Declarant or their designees shall have the right to enter the Lot, remove the violation and restore the Lot to substantially the same condition as previously existed. All costs, together with interest at a rate established by the Board (not to exceed the maximum rate then allowed by law), may be assessed against the benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration or in the Act.

(b) All design approvals shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline set forth in the approval, Declarant or the Association may, after notifying the Owner of the Lot and giving an opportunity to be heard in accordance with the By-Laws, enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefited Assessment.

(c) All acts of any contractor, subcontractor, agent, employee or invitee of an Owner shall be deemed an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the Design Guidelines may be excluded from the Community, subject to the notice and hearing procedures contained in

the By-Laws and provided in the Act. In such event, neither Declarant nor the Association, or their officers and directors, shall be held liable to any Person for exercising the rights granted by this Paragraph.

(d) After the earlier of (x) the end of the Declarant Control Period or (y) Declarant's delegation of such task to the Association, the Association shall be primarily responsible for enforcement of the Design Guidelines. So long as Declarant owns any part of the Community or has the unilateral right to annex Additional Property into the Community pursuant to Section 11.1 hereof, and in the discretion of Declarant, the Association fails to take appropriate enforcement action, as authorized herein, within a reasonable time period, then Declarant may, but shall not be obligated to, exercise enforcement rights in the same manner as set forth above for the Association. In addition to the foregoing, the Association and Declarant (so long as Declarant owns any part of the Community or has the unilateral right to annex Additional Property into the Community pursuant to Section 11.1 hereof) shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of the Design Guidelines and the Reviewer's decisions. If the Association or Declarant prevails in an action instituted pursuant to the foregoing sentence, then they shall be entitled to recover all costs including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

#### 7.6 Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly, or by reasonable implication, by the Governing Documents, or take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, the Board may exercise the Association's rights and powers without a vote of the Members.

The Board may institute, defend, settle or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation or administrative proceedings in matters pertaining to the Common Area, enforcement of the Governing Documents or any other civil claim or action. However, the Governing Documents shall not be construed to create any independent legal duty to institute any legal or other action or proceeding on behalf of or in the name of the Association or the Members.

In exercising the Association's rights and powers, making decisions on behalf of the Association and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

#### 7.7 Indemnification of Officers, Directors and Others.

The officers, directors, employees and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and employees shall have no personal liability with respect to any contractor other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

Subject to North Carolina law, the Association shall indemnify every officer, director, employee and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board of Directors) to which he or she may be a

party by reason of being or having been an officer, director, employee or committee member, except that such obligation to indemnify shall be limited to those actions for which the indemnitee's personal liability is limited under this Section.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, employee or committee member may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available, and the costs of the same shall be a Common Expense.

#### 7.8 Safety and Security.

Each Owner and occupant of a Lot, and their respective guests and invitees, are responsible for their own personal safety and the security of their property in Summerwind Plantation. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself and his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants of its Lot that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Summerwind Plantation assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

#### 7.9 Security or Access Gates.

Security or Access Gates may be constructed within or adjacent to Summerwind Plantation in order to limit access and to provide more privacy for Owners and Occupants. Each Owner and Occupant, and their families, guests and invitees, acknowledge that any such Security or Access Gate may restrict or delay entry into, or access within Summerwind Plantation by police, fire department, ambulances and other emergency vehicles or personnel. Each Owner and Occupant and their families, guests and invitees agree to assume the risk that any such Security or Access Gate will restrict or delay entry into, or access within Summerwind Plantation by police, fire department, ambulances or other emergency vehicles or personnel. Neither Declarant, the Association nor any director, officer, agent or employee of Declarant of the Association shall be liable to any Owner or Occupant or their families, guests or invitees for any claims or damages resulting directly or indirectly, from the construction, existence or maintenance of any such Security or Access Gate.

Nothing contained in this Declaration and nothing that may be represented to a purchaser by real estate brokers or salesmen representing Declarant or any developer of Lots or Common Area in the Community shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Declaration or any part of the Additional Property.

#### 7.10 Committees.

(a) The Association shall have the authority, in the discretion of the Board, to establish standing and ad hoc committees to assist it in accomplishing its tasks and its obligations under the Governing Documents, and/or to obtain Members' participation and input in the operation of the Community. The Board shall at all times maintain power and control over any committees as established and shall engage in such oversight as is reasonably necessary to ensure the committee acts in a way consistent with the goals, values and initiatives of the Association.

(b) A Neighborhood Committee is a committee of the Association, and the Board shall have all of the power and control over any Neighborhood Committees that it has with respect to other Association committees. The Association also shall exercise broad governing powers over, and shall have the power to require that specific action be taken by, a Neighborhood Committee in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be made and requiring that a proposed budget include certain items and expenditures. A Neighborhood Committee shall take such action within the reasonable time frame set by the Association. If the Neighborhood Committee fails to comply, the Association may take such action on behalf of the Neighborhood Committee and levy Benefited Assessments to cover the costs, as well as an administrative charge and sanctions. The Board may veto any action taken or contemplated by any Neighborhood Committee that the Board reasonably determines to be adverse to the interests of the Community, the Association or the Members consistent with the Community-Wide Standard.

#### 7.11 Provision of Services.

The Association may provide, or provide for, services and facilities for all or any of the Members and their Lots and may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or, if such services and facilities are provided to all Lots, the Board may opt to include the costs of the same in the Budget as a Common Expense and assess it as part of the Base Assessment. If certain services or facilities are provided to less than all Lots, then the Association may assess such costs as a Neighborhood or Benefited Assessment, as appropriate. To the extent not covered by the Base Assessment, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, trash collection and recycling and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board may modify or cancel existing contracts for services in its discretion, unless the services are otherwise required by the Governing Documents and no alternative contract for such services is feasible. Non-use of services provided to all Owners or Lots as a Common expense shall not exempt any Owner from the obligation to pay Assessments for such services.

#### 7.12 Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring properties to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

7.13 Facilities and Services: Openness to the Public, or a Portion Thereof; Redesignation.

(a) Certain facilities and areas within Summerwind Plantation may be temporarily or permanently opened for public use and enjoyment in the discretion of the facility owner. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, areas conducive to gathering and interaction, roads, sidewalks and medians.

(b) During the Declarant Control Period, without the approval or consent of the Members, and thereafter, pursuant to action of the Members taken at a duly called meeting of the Members, the Board shall have the power and right to change the use of portions of the Common Area and Limited Common Area. Any such change shall be pursuant to Board resolution stating that: (a) the present use or service is no longer in the best interest of the Owners, (b) the new use is for the benefit of the Owners, (c) the new use is consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Area or Limited Common Area, (d) the new use is consistent with the then effective Master Plan and Summerwind Plantation Plan and (e) in the case of Limited Common Area serving one or more Neighborhoods, the change has been approved by the Neighborhood Committee(s), if any, that administer such Limited Common Area.

Notwithstanding the above provisions of this subsection, if, after the Declarant Control Period, the Board adopts a resolution which states that the change in use will not have an adverse effect on the Association and the Owners, the Board may give notice of the change to all Owners. The notice shall give the Owners a sight to object within thirty (30) days of the notice. If less than ten percent (10%) of the Members who will be affected by the change submit written objections, the change shall be deemed approved, and a meeting shall not be necessary.

7.14 View Impairment.

Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any Common Area or open space within the Community will be preserved without impairment, and neither party shall be obligated to relocate, prune or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association and Declarant (with respect to the Common Area) have the right to add trees, walls, fences, berms, homes or other structures, signs, lighting, water features and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Notwithstanding the above, the Design Guidelines or Association rules may impose requirements restricting the location of modifications to existing Improvements designed to preserve views.

7.15 Relationship with Governmental and Tax-Exempt Organizations.

The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments, public utility providers and non-profit, tax-exempt organizations for the benefit of the Community, the Association and the Members. The Association may contribute or receive money, real property (including Common Area), personal property or services to or from any such entity. Any such

contribution shall be a Common Revenue or Expense and included as a line item in the Association's annual budget.

For the purposes of this section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code", such as, but not limited to, entities which are exempt from federal income taxes under Section 501(c)(3) or 501(c)(4) of the Code, as the same may be amended from time to time.

#### 7.16 Real Estate Taxes.

The Community is located in one real estate tax district (Johnston County). If the Community is expanded from time to time, pursuant to the powers granted to Declarant hereunder, it may also come to include property located outside the limits of Johnston County. Accordingly, the real estate taxes levied against a Lot may differ from those levied against another, possibly neighboring Lot. Neither the Declarant nor the Association have nor wish to attempt to take any control over the boundary lines of tax districts or the taxes levied thereunder.

#### 7.17 Master Delegate. Intentionally omitted

#### 7.18 Golf Cart Operation and Maintenance

Each Owner who elects to own and operate a golf cart within the Summerwind Plantation community shall be subject to specific rules and regulations promulgated by the Association relating to the ownership, maintenance and operation of such golf carts to ensure the health, safety, and welfare of all Members and their personal and real property, including their Lots, within the Summerwind Plantation community. DECLARANT, THE ASSOCIATION AND THEIR RESPECTIVE MEMBERS, MANAGERS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS AND AGENTS, (collectively "Indemnified Parties") HAVE NO CONTROL OVER AND CANNOT BE HELD LIABLE FOR, ANY LOSS AND/OR LIABILITY CREATED BY OR ARISING FROM, DIRECTLY OR INDIRECTLY, THE USE, OPERATION, MAINTENANCE, OR OWNERSHIP OF ANY GOLF CART BY ANY OWNER, THEIR GUESTS, TENANTS, EMPLOYEES, FAMILY MEMBERS, AGENTS, OR INVITEES. EVERY OWNER WHO ELECTS TO OWN AND OPERATE A GOLF CART WITHIN THE SUMMERWIND PLANTATION COMMUNITY ASSUMES ALL RISK OF PERSONAL AND REAL PROPERTY DAMAGE, PERSONAL INJURY, AND DEATH, REGARDLESS OF WHETHER SUCH EVENT OCCURS ACCIDENTALLY, THROUGH THE NEGLIGENCE OF THE GOLF CART OPERATOR, OR THROUGH INTENTIONAL OR WILLFUL MISCONDUCT OF THE GOLF CART OPERATOR AND/OR GOLF CART OWNER. EACH OWNER WHO ELECTS TO OWN AND OPERATE A GOLF CART WITHIN THE SUMMERWIND PLANTATION COMMUNITY ACKNOWLEDGES THAT THE USE AND OPERATION OF A GOLF CART HAS CERTAIN POTENTIAL RISKS AND HAZARDS RELATING TO ITS OPERATION WHICH CAN CAUSE PERSONAL INJURY, PROPERTY DAMAGE OR DEATH IF NOT OPERATED IN A CAREFUL AND SAFE MANNER. ALL OWNERS WHO OWN AND/OR OPERATE A GOLF CART HEREBY AGREE TO INDEMNIFY AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM ALL LOSS AND/OR LIABILITY FOR PERSONAL AND REAL PROPERTY DAMAGE, PERSONAL INJURY AND/OR DEATH CAUSED BY OR ARISING FROM SUCH OWNER, OWNER'S TENANTS, INVITEES, GUESTS, FAMILY MEMBERS, EMPLOYEES AND/OR AGENTS, DIRECTLY OR INDIRECTLY, THE USE, OPERATION AND/OR OWNERSHIP OF A GOLF CART AS DESCRIBED HEREIN.

All Owners, by electing to own and operate a golf cart within the Summerwind Plantation community, agree to abide by all rules and regulations promulgated by the Association governing the use, operation, maintenance and ownership of such golf carts within the Summerwind Plantation community. All such Owners acknowledge that if any enforcement of such rules and regulations, the Association, through its Board, or its designees, elect to exercise any self-help remedies to enforce these rules and regulations for the purposes promulgated thereunder may include either the temporary or permanent suspension of all lot owner's rights to own and operate a golf cart within Summerwind Plantation based on the Board's determination as authorized herein. All Owners acknowledge that if the Board determines that such violations constitute authority to permanently suspend the use of an Owner's golf cart within the Summerwind Plantation community, the Board has the authority to either temporarily or permanently prohibit the use and operation of such golf cart by any offending owner, or their tenants, guests, employees, family members or invitees based on the Board's determination after appropriate notice and hearing.

### **Article VIII Telecommunity**

*An important aspect of the Association's mission is to perpetuate a sense of community life and spirit within Summerwind Plantation. To promote this goal, the Association may provide technology, activities, services, educational opportunities, entertainment, social events, healthcare information and other programs for the Community. By providing these diverse components, the Association endeavors to establish community building and networking opportunities among all members of the Community.*

*In order to encourage awareness of and participation in, the activities, programs, opportunities, events and services provided by or through the Association, a telecommunity system may be developed to provide a communication resource that connects all members of the Community.*

#### **8.1 Community Intranet System.**

A community intranet system, which would be maintained by the Association, may be established by the Declarant (during the Declarant Control Period) or if thereafter by the Association. The Board shall have discretion and authority in determining and selecting an appropriate system and may change, modify or terminate the system from time to time. There is no guarantee or representation that any particular type of community intranet system or systems will be utilized.

#### **8.2 Provider of Broadband Service.**

Declarant and the Association shall have authority to select the provider or providers of the components of a broadband internet system for the Community (including, but not limited to, hardware, software, programming, infrastructure, services, management and administration). The Association shall have no obligation to utilize any particular provider or providers.

The Association may enter into contracts with providers for different components of a community broadband system and with other Persons for the maintenance, management, administration, upgrading, modification and operation of such system. The terms of a particular contract may obligate individual Owners or Occupants to execute contracts or agreements directly with the Persons providing the product or service under contract prior to gaining access to the

broadband system. Such contracts or agreements may contain terms and conditions relating to use and access to the community broadband system, in addition to those contained in this Article.

Charges for such services may be collected by the Association as service fees upon approval of the Board of Directors ("Service Fees").

### 8.3 Governmental Regulation.

Any community broadband system and its providers, managers and operators may be subject to federal, state or municipal regulations, laws and ordinances. Such regulations, laws, and ordinances may have a significant impact on certain aspects of the system including, but not limited to, the fees charged, the method of delivery, the rights of the system users, as well as the rights of the system providers or operators. These regulations and their impact are beyond the Association's control.

### 8.4 Use of Technology.

In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, and in addition to the community broadband system provided for above, the Association may provide for or offer services that make use of computers and other technological opportunities and charge the fees for the same as a Common Expense. For example, to the extent permitted by North Carolina law, and unless otherwise specifically prohibited in the Governing Documents, the Association may send required notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, send notice of and collect Assessments and other invoices over the computer, sponsor a community cable television channel, create and maintain a community intranet or Internet home page offering interactive participation opportunities for users, maintain an "online" newsletter or bulletin board; and provide funding to the Association for any of the above purposes, which shall constitute a Common Expense.

### 8.5 Central Telecommunication, Receiving and Distribution System.

Declarant reserves for itself, its affiliates, successors and assigns, the exclusive and perpetual right and easement, but not the obligation, to operate within Summerwind Plantation and to service the Improvements on or within any Lot, a central telecommunication receiving and distribution system (including cable television and security monitoring), including conduits, wires, amplifiers, towers, antennae and other related apparatus and equipment (collectively, the "Community Systems") as Declarant, in its discretion, deems appropriate. Such exclusive and perpetual right shall include, without limitation, Declarant's right to select and contract with companies licensed to provide telecommunications and cable television service in the vicinity of Summerwind Plantation, and to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules and regulations of the relevant government authority, if applicable.

Declarant may require that the Association enter into a bulk rate service agreement for the provision of Community Systems to all Lots as a Service Fee to be collected by the Association. If particular services or benefits are provided to particular Owners or Lots at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may collect the costs as a Service Fee, if appropriate.

### 8.6 Notices and Disclaimers as to Community Systems.



In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, neither Declarant nor any of Declarant's successors or assigns shall in any manner be liable for, and no Community System user shall be entitled to refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

#### 8.7 Disclaimer and Limitation of Liability.

The Association shall not be liable for any loss, damage or injury resulting from (a) any virus or contamination of any data, computer or computer system arising from access to the Community Systems; (b) any delays, interruptions or inconveniences in accessing or using any functions of the Community Systems or inability to access or download information, software or other materials through the Community Systems; (c) the quality, validity, completeness of or any inaccuracies, errors or omissions in, any information, software or other materials accessible through the Community Systems. The Association does not endorse and makes no representations or warranties regarding the quality, safety, suitability or usefulness of any software or other materials accessible through the Community Systems. All users assume the entire risk associated with use of and access to the Community Systems and any information, software or other materials available through the Community Systems. The Community Systems and all information and materials accessible to users of the Community Systems are made available "as is" without warranties of any kind, either express or implied, including, without limitation, warranties of title or implied warranties of merchantability or fitness for a particular purpose.

Information contained in the Community Systems shall be made available exclusively to Owners via a password protected web site. This information will never be sold, distributed or used in any manner other than for this purpose by Declarant or Association. However, the security of any web site is not guaranteed; therefore, by placing an entry on the web site, you understand the potential security risks involved and acknowledge that Declarant and Association are not responsible for any unauthorized misuse by Residents, Owners or others outside of this Community.

Declarant may disclose any content, Record or electronic communication of any kind including personal information of the user for any purpose whatsoever including, but not limited to:

1. Satisfy any law, regulation or authorized governmental request;
2. If such disclosure is necessary, in Declarant's sole discretion, to operate the Community Systems;
3. Protect the rights or property of Declarant, any affiliate of Declarant or users of the Community Systems;
4. Any affiliate of Declarant for any purpose whatsoever, including, but not limited to, the purpose of sending e-mails or solicitations.

#### **Article IX Association Finances**

9.1 Budgeting and Allocating Common Expenses.

Declarant shall establish the initial Base Assessments by calculating the amount needed to meet the financial needs of the Association for the fiscal year and dividing that amount by the number of Lots platted for the Community (other than Declarant's Lots) as of the first day of the Association's fiscal year. In consideration of paying Declarant's obligation pursuant to Section 9.7(b) hereof, Declarant shall not be responsible for paying any other Assessments pursuant to this Declaration (whether base, benefited, neighborhood or otherwise) on Lots owned by Declarant.

In determining the Base Assessment, the Board may consider any Assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to Assessment during the fiscal year.

Within thirty (30) days of adopting the Budget, the Board shall send to each Owner (a) a copy of the Budget, (b) notice of the amount of the Base Assessment, and (c) notice of a meeting scheduled to consider ratification of the Budget prior to the beginning of the fiscal year. If any proposed Budget is disapproved under Section 9.9 hereof, or if the Board fails for any reason to determine the Budget for any year, then the Budget most recently in effect shall continue in effect until a new Budget is determined.

The Board may revise the Budget and adjust the Base Assessment from time to time during the year, subject to Section 9.9 hereof and the notice requirements set forth above.

The budget may include a Service Fee to be collected by the Association for bulk rate services pursuant to Article VIII.

9.2 Budgeting and Allocating Neighborhood Expenses.

Declarant shall establish the initial Neighborhood Base Assessments by calculating the amount needed to meet the financial needs of the Neighborhood for the fiscal year and dividing by the number of Lots platted (other than Lots owned by Declarant) in that Neighborhood as of the first day of the fiscal year.

At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare separate Neighborhood budgets covering the estimated Neighborhood Expenses, if any, for each Neighborhood during the coming year. Each such Neighborhood budget shall include any costs for additional services or a higher level of services which the Owners in such Neighborhood have approved pursuant to Section 6.4(a) hereof and any contribution to be made to a reserve fund pursuant to Section 9.3 hereof. Each Neighborhood budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments levied against the Lots and the amount to be generated through the levy of Assessments against the Lots in such Neighborhood.

The Board shall make available copies of each Neighborhood's budget and shall send notice of the amount of the Neighborhood Assessment with a summary of the Neighborhood budget for the coming year to each Owner in the Neighborhood at least thirty (30) days before the fiscal year begins. Except as required under Section 9.9 hereof, Neighborhood budgets shall not

be subject to Owner approval, and there shall be no obligation to call a meeting to consider Neighborhood budgets.

If the proposed budget for any Neighborhood is disapproved under Section 9.9 hereof or if the Board fails for any reason to determine a Neighborhood's budget for any year, then until such time as a budget is determined, the Neighborhood budget in effect for the year before shall continue for the current year.

The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment from time to time during the year, subject to the notice requirements and the right of the Owners of Lots in the affected Neighborhood to disapprove the revised budget as set forth above.

All amounts the Association collects as Neighborhood Assessments shall be held in trust for and expended solely for the benefit of the Neighborhood for which they were collected. Such amounts shall be accounted for separately from the Association's general funds.

### 9.3 Budgeting for Reserves.

Within six (6) months following conveyance of the Common Areas to the Association, the Board shall obtain a Reserve Study and establish or verify that the Budget includes appropriate reserves. The Budget shall include expenses associated with Common Area and each Neighborhood for which the Association maintains capital items as a Neighborhood Expense, if any. The budget for Reserves shall take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board shall, in the exercise of its business judgment, establish a plan to fund Reserves at a level projected to achieve 40-60% funding by the end of the Declarant Control Period; thereafter, the Board shall review the budget for Reserves annually and when additional common areas are conveyed. Amounts to be funded as reserves shall be reflected as such in the budget for Common Expenses and the Neighborhood budgets, as appropriate.

The Board shall adopt a policy restricting the expenditure of any Reserves, including policies designating the nature of assets for which Reserves may be expended. Such policies may differ for general Association purposes and for each Neighborhood. During the Declarant Control Period, neither the Association nor the Board shall adopt, modify, limit or expand such policies without Declarant's prior written consent.

The Board may enter into agreements with Declarant regarding the timing and extent of Declarant contributions, on negotiated terms, under which Declarant may provide financial assurances in lieu of cash.

### 9.4 Special Assessments.

In addition to other authorized Assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of the Budget. Any such Special Assessment may be levied against all Members, if such Special Assessment is for Common Expenses, or against the Lots within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing at least two-thirds (2/3) of the total votes allocated to Lots which will be subject to such Special Assessment and, during the Declarant Control Period, the affirmative vote or written consent of

Declarant. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.5 Benefited Assessments.

The Association shall have the power to levy Benefited Assessments against particular Lots as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon the request of the Lot's Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 7.11 hereof or which the Association may otherwise provide to less than all Owners under this Declaration or any Supplemental Declaration; and
- (b) to cover costs incurred in bringing the Lot into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees or guests; provided, however, the Board shall give the Lot's Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Benefited Assessment under this subsection (b).

Benefited Assessments for special services may be levied in advance of the provision of the requested service. The Association may also levy a Benefited Assessment against the Lots within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents; provided, however, the Board shall give prior written notice to the Owners of Lots in the Neighborhood and an opportunity for such Owners to be heard before levying any such Assessment.

9.6 Commencement of Assessment and Service Fee Obligation: Time of Payment.

The obligation to pay Assessments, and Service Fees if required, shall commence as to each Lot on the date of conveyance of title from an approved builder of a completed dwelling on a Lot to any person or entity intending to occupy such Lot as a residential dwelling (the Owner). It is the intent of this Declaration that homeowner's dues as to any Lot shall not commence and shall not be due and payable either from Declarant or from any approved builder, unless such builder completes construction of a dwelling and either uses such dwelling as his residence or leases such dwelling as authorized herein to a person occupying the dwelling as a residential dwelling. The first annual Base Assessment and Neighborhood Assessment levied on each Lot shall be pro-rated for the time remaining in the fiscal year in which the Lot is conveyed to the Owner.

Advance payment of Assessments shall be required for the applicable payment period at closing of the transfer of title to a Lot. The Board may impose special requirements for Owners with a history of delinquent payment. The Board shall establish whether Assessments are to be paid annually, semi-annually or in quarterly or monthly installments. Until the Board otherwise provides, the annual Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on its Lot, the Board may require the outstanding balance on all Assessments to be paid in full immediately.

### 9.7 Obligation for Assessments.

(a) *Personal Obligation.* Each Owner, by accepting a deed for any Lot, covenants and agrees to timely pay all Assessments authorized in the Governing Documents and Service Fees, if any. All Assessments, together with interest (computed from its due date at a rate of eighteen percent (18%) per annum or such higher rate as the Board may establish, in compliance with the Act and otherwise subject to the limitations of North Carolina law), late charges as determined by Board resolution, costs and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee of title shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance. All Service Fees shall be the personal obligation of each Owner.

The Board's failure to establish or obtain Member approval of Assessment amounts or rates, if required hereunder, or the Board's failure to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as during the last fiscal year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections,

No Owner is exempt from liability for Assessments by non-use of Common Area, abandonment of his or her Lot or any other means. The obligation to pay Assessments is a separate and independent covenant for which each Owner is jointly and severally liable. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the Association or Board.

Common Expense caused by negligence or misconduct of an Owner, Tenant or Occupant may be assessed exclusively against the Owner or Occupant's Lot.

Within ten (10) business days of receiving a written request from an Owner, Mortgagee or other person designated by the Owner, the Association shall furnish to the requesting party or other Person designated in the written request a certificate in writing signed by an Association officer setting forth the amount of any unpaid Assessments against the applicable Lot. Such certificate shall be conclusive evidence of payment or non-payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such a certificate.

#### (b) Declarant's Obligation.

(i) During the Declarant Control Period, Declarant shall not be obligated to pay Assessments on its unsold Lots but, instead, shall be obligated to pay a subsidy based on the "shortage" (*i.e.*, operating deficit) for each fiscal year. A "shortage" shall exist if Income and Revenues (each as defined below) for a particular fiscal year are less than Expenditures (as defined below) incurred for the same fiscal year. Income, Revenues and Expenditures are to be calculated using the accrual basis of accounting.

(ii) For purposes of this section, Income and Revenues are defined as the amount of all income and revenue of any kind earned by the Association during the subject fiscal year, including but not limited to, Assessments, use fees, cash advances (if any) provided

by Declarant and income from all other sources. For purposes of this section, Assessments for each Lot shall be deemed earned on the anniversary of the commencement of Assessments with respect to such Lot.

(iii) For purposes of this section, Expenditures are defined as the amount of all actual operating expenses incurred by the Association or for which the Association is obligated during the subject fiscal year, including without limitation any contributions to Reserves for such year and any budgeted or approved non-budgeted capital assets acquired during the fiscal year. Expenditures shall not include (1) all non-cash expenses, such as depreciation or amortization, (2) expenditures for or purchase of non-budgeted, non-approved items and (3) all expenditures paid from Reserves. For purposes of this paragraph, "approved" shall mean the same has been given the prior written approval of Declarant.

(iv) Following the expiration or termination of the Declarant Control Period, Declarant may annually elect either to pay the Assessments described in Subsection (i) above on each of its unsold Lots or to pay the shortage for such fiscal year. Declarant's election may be made separately with respect to Base Assessments and Neighborhood Assessments. If Declarant elects to pay Assessments on each Lot and, after such payment, a shortage exists, Declarant may, but shall not be obligated to, pay such shortage. Unless Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

(v) The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials or a combination of services and materials with Declarant or other entities for payment of Common Expenses. Declarant's payment of Assessments may be reduced or abated by the agreed value of any such services or materials provided by Declarant, in accordance with any such contract or agreement with the Association.

(vi) Any such subsidy for Base Assessments or Neighborhood Assessments shall be disclosed as a line item in the income portion of the Budget. The payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

#### 9.8 Lien for Assessments.

The Association shall have a lien against each Lot, including Declarant's Lots, to secure payment of Assessments that are delinquent by thirty (30) days or more, as well as interest, late charges (subject to the limitations of North Carolina law, other than the Act) and costs of collection (including attorneys' fees by filing a claim of lien in the office of the Clerk and as otherwise authorized by the Act). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, Assessments and other levies which by law would be superior, (b) the lien or charge of any Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value and (c) the lien of any assessments levied pursuant to the Master Declaration, if recorded. Such lien, when delinquent, may be enforced by suit, judgment and judicial or non-judicial foreclosure in a like manner as the foreclosure of a deed of trust, pursuant to North Carolina General Statutes 45, Section 2A.

At a foreclosure sale, the Association may bid for the Lot and acquire, hold, lease, mortgage and convey the Lot. The Association may sue for unpaid Assessments and other charges without foreclosing or waiving its Assessment lien.

Sale or transfer of any Lot shall not affect the Assessment lien or relieve such Lot from the lien for any subsequent Assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee extinguishes the lien relating to any amounts due prior to the Mortgagee's foreclosure. The purchaser of a foreclosed Lot shall not be personally liable for Assessments on such Lot due prior to the foreclosure sale. Such unpaid Assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to Assessment under Section 9.6 hereof, including such purchaser, its successors and assigns.

Notwithstanding the above, if a Lot is owned by the Association: (a) no right to vote shall be exercised on its behalf, (b) no Assessment shall be levied on it and (c) each other Lot shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association.

#### 9.9 Limitation on Increases of Assessments.

Notwithstanding any provision to the contrary, and except for Assessment increases necessary for emergency situations, the Board may not impose a Base Assessment or Neighborhood Assessment that is more than twenty percent (20%) greater than such Assessments for the immediately preceding fiscal year without the approval of a majority of the Members subject to the applicable Assessment. Approval may be indicated by vote or written consent.

An emergency situation is any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible where a threat to personal safety is discovered; or
- (c) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible which could not reasonably have been foreseen by the Board in preparing and distributing the pro forma budget pursuant to Section 9.1 hereof. However, prior to the imposition or collection of such an Assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Notice of such resolution shall be provided to the Members along with the notice of such Assessment.

#### 9.10 Exempt Property.

The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments and Special Assessments:

- (a) All Common Area and other portions of the Community that are not Lots;
- (b) Any property dedicated to and accepted by any governmental authority or public utility;

(c) All Limited Common areas and other portions of the Neighborhood that are not Lots and are used for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common; and

(d) All property owned by the Master Association and operated as "Common Area" for purposes of the Master Declaration.

In addition, both Declarant and the Association shall have the right, but not the obligation, to grant exemptions to Persons qualifying for tax exempt status under Section 501(c) of the Code, as amended, so long as such Persons own property subject to this Declaration for purposes listed in said section.

#### 9.11 Capitalization of Association.

Upon acquisition of Record title to a Lot by the first Owner thereof from our approved Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association initially in the amount of one hundred dollars (\$100.00). This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such Assessment. This amount shall be collected at the closing of the purchase of the Lot and disbursed there from to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws. This amount may be charged by Declarant from time to time during the Declarant Control Period, or by the Association from time to time, following the end of the Declarant Control Period, as necessary to properly establish and ensure that all Owners fairly contribute to the working capital of the Association.

#### 9.12 New Member Fee.

(a) *Authority.* As an additional funding source, in addition to the administrative or transfer fee collected to cover administrative costs of membership transfer, the Association and Declarant shall collect a "New Member Fee" upon each transfer of title to a Lot, other than exempt transfers as set forth herein. The New Member Fee shall be charged to the grantor of the property, shall be payable by grantor or grantee as their contract provides to the Association and Declarant at the closing of the transfer of the Lot, and shall be secured by the Association's lien for Assessments. Each Owner transferring a Lot shall notify the Association's secretary or designee at least seven (7) days prior to the scheduled closing. Such notice shall include the name of the buyer, the date of title transfer and other information the Association may reasonably require.

(b) *Fee Limit.* The fee to the Association and to Declarant shall equal one-third (1/3) of one percent (1%) of the Gross Selling Price of the Lot, with all Improvements, upgraded and premiums included, and shall be due upon the closing of the Sale of the Lot. The Gross Selling Price shall be the total cost to the purchaser of the Lot, excluding transfer taxes and title fees imposed by Wake County.

(c) *Purpose.* New Member Fees allocated to the Association shall be used for purposes which the Association Board deems beneficial to meet the general operating needs of the Association. By way of example and not limitation, New Member Fees may be used to assist the Association of one or more tax-exempt entities in funding operating and maintenance costs for



recreational facilities, common areas open space preservation and all other funding needs for operating the Association.

(d) *Duration.* The term for the collection of the New Member Fee shall be the duration of this Declaration for the portion payable to the Association and for a term of ten (10) years from the date of Recording of this Declaration for the portion to be paid to Declarant.

(e) *Exempt Transfers.* Notwithstanding the above, no New Member Fee shall be levied upon transfer of title to property:

(i) by or to Declarant;

(ii) by a co-owner to any Person who was a co-owner immediately prior to such transfer;

(iii) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner

(iv) to an entity wholly owned by the grantor or to a family trust created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the New Member Fee shall become due; or

(v) to an institutional lender as security for the performance of an obligation pursuant to a Mortgage.

9.13 Collection of Master Declaration Assessments If Master Declaration Filed and Master Association Formed.

The Association has the authority to collect as due from Owners in the Community the amount of any assessments coming due under the terms of the Master Declaration, if recorded. Nothing in the foregoing sentence shall be construed so as to limit or waive the Master Association's right and authority to collect any assessments due under the Master Declaration. Any such amounts collected by the Association pursuant to the Master Declaration shall be remitted promptly to the Master Association and shall not at any time be considered as property of the Association. Assessments due under the Master Declaration shall be allocated equally among all similarly situated Lots. Notwithstanding the foregoing sentence, assessments due under the Master Declaration charged to the Association shall be a line item in the Association budget to be collected from Owners in the same manner as general assessments pursuant to this Article IX and shall be paid to the Master Association or the Master Declarant, as the case may be. The aforementioned assessment obligation shall be enforceable by the Master Association or the Master Declarant, as the case may be, against the Association and the Owners as provided in the Master Declaration. The Association shall pay to the Master Association or the Master Declarant, as the case may be, its share of the Master Declaration assessment as provided in the Master Declaration. Notwithstanding anything herein to the contrary, nothing herein shall prohibit the Association from levying as a Special Assessment pursuant to Section 9.4 hereof or as a Benefited Assessment pursuant to Section 9.5 hereof any amounts charged to the Association pursuant to the Master Declaration which charges have been allocated to one (1) or more Lots hereunder or are occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the Occupant(s), licensees or invitees of any such Lot(s).

## **D. COMMUNITY DEVELOPMENT**

The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Summerwind Plantation and to accommodate changes in the Summerwind Plantation Plan which inevitably occur as a community the size of Summerwind Plantation grows and matures.

### **Article X Activity Cards**

#### **10.1 Issuance by the Board.**

One (1) Activity Card shall be allocated to each Occupant and/or Owner of a Lot, up to a maximum of two (2) Activity Cards per Lot. The Board shall review entitlement to Activity Cards on an annual basis. Activity Cards shall be renewed annually, so long as all applicable Assessments and other charges pertaining to such Lot have been paid. The Board may establish policies, limits and charges with regard to the issuance of additional, renewal or replacement cards and guest privilege cards.

The Board may, at its sole discretion, issue temporary Activity Cards to persons who have signed binding contracts to purchase a Lot, subject to such policies as the Board may determine from time to time. Any temporary Activity Card(s) provided pursuant to the foregoing sentence shall expire at the closing of a Lot.

#### **10.2 Assignment of Rights.**

The right to an Activity Card shall be tied to Occupancy of a Lot. Any Owner who leases or otherwise transfers Occupancy of his or her Lot shall be deemed to have assigned his or her rights to an Activity Card to the Tenant of such Lot. Any Owner who leases or otherwise transfers Occupancy of his or her Lot shall provide the Association with immediate written notice thereof and shall surrender to the Association his or her previously issued Activity Card. Activity Cards shall be surrendered by any holder who ceases to Occupy a Lot, or at any time upon written notification from the Association that the holder no longer is entitled to hold an Activity Card.

#### **10.3 Issuance to Declarant.**

As long as Declarant owns any portion of the Community or has the right to annex property pursuant to Section 11.1 hereof, the Association shall provide Declarant, free of charge, with as many Activity Cards as Declarant, in its sole discretion, deems necessary for the purpose of marketing the Community or any Additional Property. Declarant may transfer the Activity Cards to prospective purchasers of Lots subject to such terms and conditions as it, in its sole discretion, may determine. Activity Cards provided to Declarant shall entitle the bearer to use all Common Area and recreational facilities (subject to the availability, payment of admission fees or other use fees charged to Occupants and Owners holding Activity Cards).

### **Article XI Expansion of the Community**

#### **11.1 Annexation by Declarant.**

Declarant may, from time to time, subject to this Declaration all or any portion of the Additional Property described on Exhibit B by Recording a Supplemental Declaration describing

the property being subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to annex property pursuant to this section expires when all Additional Property has been subjected to this Declaration or twenty (20) years after this Declaration is Recorded, whichever is later. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the existing Property or Additional Property. Any such transfer shall be memorialized in a Recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the Additional Property in any manner whatsoever.

#### 11.2 Annexation by the Association.

The Association also may annex property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of more than fifty percent (50%) of the Members in person or by proxy at a meeting duly called for such purpose, and the consent of the property owner. Further, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 11.1 hereof, Declarant's consent shall be required for such annexation to be effective. Such Supplemental Declaration shall be executed by the Association, the owner(s) of the property being annexed, and, for as long as consent thereof is required, the Declarant.

#### 11.3 Additional Covenants and Easements.

By Supplemental Declaration, Declarant may impose additional covenants and easements on portions of the Community, including covenants obligating the Association to maintain and insure specific property and authorizing the Association to recover its costs through Neighborhood Assessments. If a person other than Declarant owns any of the property affected by the additional covenants or easements, then the consent and signature of such Owner(s) shall be required on the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

#### 11.4 Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon Recording, unless otherwise specified. The Lots are thereby subjected to this Declaration and the jurisdiction of the Association and shall have equal voting rights in the Association and equal pro-rata liability for Base Assessments with all other Lots.

### **Article XII Additional Rights Reserved to Declarant**

#### 12.1 De-Annexation of Property.

Declarant reserves the right to amend this Declaration by Recording an Amended Supplemental Declaration, so long as it has a right to annex property pursuant to Section 11.1 hereof, to remove any portion of Summerwind Plantation from the coverage of this Declaration;

which has not been improved and sold to a third party buyer for occupancy. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not Declarant. If the property is Common Area, the Association shall consent to such withdrawal and shall reconvey to Declarant any withdrawn property owned by the Association.

#### 12.2 Marketing and Sales Activities.

Notwithstanding any provision in this Declaration, including the Use Restrictions set forth in Exhibit C, to the contrary, Declarant may construct and maintain upon portions of the Common Area and other property owned by Declarant or the Builder such facilities, activities and things as, in Declarant's opinion, may reasonably be required, convenient or incidental to the construction or sale of Lots. Such permitted facilities, activities and things shall include, without limitation, business offices, signs, flags (whether hung from flag poles or attached to a structure), model Lots, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient or incidental to construction or sales activities, Declarant, Declarant's Affiliates and their employees, agents and designees may park vehicles in areas other than garages or driveways, including on streets. Declarant shall have easements for access to and use of such facilities at no charge.

#### 12.3 Right to Develop.

Declarant and Declarant's Affiliates and their employees, agents and designees shall have a right of access and use of, and an easement over and upon, all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area and to the Additional Property, as it deems appropriate in its sole discretion.

Each Owner acknowledges that Summerwind Plantation is a master planned community, the development of which is likely to extend over many years and agrees not to protest, challenge or otherwise object to (a) changes in uses or density of property outside the Owner's Neighborhood or (b) changes in the Summerwind Plantation Plan as it relates to property outside the Owner's Neighborhood.

Declarant, for itself or its successors, specifically reserves the right to develop land adjacent to or in the vicinity of the Community for commercial uses.

Nothing contained in this Declaration or in any Supplemental Declaration or Neighborhood Declaration shall be construed to prevent the construction, installation or maintenance by Declarant, any Declarant Affiliate or any agents or contractors thereof, during the period of development, construction and sales on the Property, of Improvements, landscaping or signs deemed necessary or convenient by Declarant, in its sole discretion, to the development or sale of property within the Property.

#### 12.4 Right to Designate Sites for Governmental and Public Interests.

For so long as Declarant owns any existing Property or any Additional Property, Declarant may designate sites within the Community for government, education or religious activities and interests, including without limitation, fire, police and utility facilities, schools and educational facilities, houses of worship, parks, commercial and other public facilities subject to receiving all necessary approvals. The sites may include Common Area, in which case the

Association shall take whatever action is required with respect to such site to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

12.5 Right to Approve Additional Covenants.

No Person, other than Declarant, shall Record any additional covenants, conditions or restrictions affecting any portion of the Community without Declarant's review and written consent. Any instrument Recorded without compliance with the foregoing sentence shall be void and of no force and effect unless subsequently approved by written consent, signed by Declarant, and Recorded.

12.6 Right to Approve Changes in Community Standards.

No amendment to or modification of any Use Restrictions, rules or the Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with the terms hereof.

12.7 Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a Recorded instrument signed by Declarant and executed by assignee. Declarant may allow other Persons to exercise, on a one time or limited basis, any Declarant right without transferring such right in its entirety. In such case, this Declaration does not require a Recorded instrument for such temporary transfer. However, a Recorded instrument may be required by the Act.

12.8 Exclusive Rights to Use Name of Development.

No Person shall use the name "Summerwind Plantation" or any derivative of such name in any printed or promotional material, or in logo or depiction, without Declarant's prior written consent. However, Owners may use the name "Summerwind Plantation" where such term is used solely to specify that particular property is located within the Community, and Declarant may offer to the Association a license to use the words "Summerwind Plantation" in its name.

12.9 Summerwind Plantation Marks.

Any use by the Association of names, marks or symbols of Summerwind Plantation or any of its affiliates (collectively "Summerwind Plantation Marks" shall inure to the benefit of Summerwind Plantation and shall be subject to Summerwind Plantation's periodic review for quality control. The Association shall enter into license agreements with Summerwind Plantation, terminable with or without cause and in a form specified by Summerwind Plantation in its sole discretion, with respect to permissive use of certain Summerwind Plantation Marks. The Association shall not use any Summerwind Plantation Mark without Summerwind Plantation's prior written consent.

12.10 Equal Treatment.

So long as Declarant owns any Existing Property or any Additional Property, neither the Association nor any other entity shall, without the prior written consent of Declarant, adopt any policy, rule or procedure that:

- (a) limits the access of Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas of the Association or to any property owned by any of them;
- (b) limits or prevents Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Areas or any property owned by any of them in promotional materials;
- (c) limits or prevents purchasers of new residential housing constructed by Declarant, its successors, assigns and/or affiliates in the Community from becoming members of the Association or enjoying full use of its Common Areas, including purchasers qualifying under Section 12.16 hereof subject to the membership provisions of this Declaration and the By-Laws;
- (d) discriminates against or singles out any group of Members or prospective Members or Declarant provided that this provision expressly prohibits the establishment of a fee structure (*i.e.*, Assessments, Special Assessments and other mandatory fees or charges other than Benefited Assessments, chartered club dues and use fees) that discriminates against or singles out any group of Members or Declarant, but does not prohibit the establishment of Benefited Assessments;
- (e) impacts the ability of Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for the Community, as such plans are expressed in the Summerwind Plantation, as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete the Community shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or
- (f) impacts the ability of Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

Neither the Association nor any other entity or Neighborhood Committee (if any) shall exercise its authority over the Common Areas (including, but not limited to, any gated entrances and other means of access to the Community or the Additional Property) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Community or the Additional Property over the streets and other Common Areas within the Community. The Association shall not condone, encourage its members or participate in public assembly for the purpose of interfering with Declarant's business within the Community or engage in any activity that presents a public health or safety risk.

### 12.11 Right to Use Common Area and Recreational Facilities for Special Events.

As long as Declarant owns any Existing Property or Additional Property, Declarant shall have the right to use all Common Area, including the Recreational Facilities, to sponsor special events for charitable, philanthropic, sports and social purposes as determined by Declarant in its sole discretion. Any such event shall be subject to the following conditions:

- (a) the availability of the facilities for the period of time requested of the Association by Declarant, provided that the request is not submitted more than six (6) months prior to the actual special event.
- (b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event (as per the insurance requirements for such events set forth herein) other than customary use charges that shall be waived; and
- (c) Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

The foregoing rights of Declarant to use such areas shall include the right (i) to temporarily exclude Members from such areas and/or facilities, as required during the set-up, duration and clean-up associated with any special event, (ii) to charge admission or other fees in connection with the use of such areas and/or facilities in connection with a special event, and (iii) to allow non-Members access (including access free of charge) to such areas and/or facilities. Declarant may also allow clubs or other similar organizations, whether nonprofit or for-profit, to operate within the Common Area and/or the Recreational Facilities on a regular or recurring basis so long as such operations (x) are for the benefit of, and provide services exclusively to, Members, and (y) do not materially prevent or impair other Members' use of the Common Area or Recreational Facilities for extended periods of time. Such clubs or other organizations may charge fees to Members and require advance registration for participation in theft activities. Notwithstanding the foregoing, however, the Association shall be entitled to operate certain Common Area and Recreational Facilities on a fee-for-usage basis so long as it does not charge the operating expenses for such activities for which fee-for-usage charges are recouped in annual Assessments. Furthermore, the Association shall be entitled to hire a management company to operate the Recreational Facilities on the Association's behalf, and such management company shall not be treated as a club hereunder but shall enjoy the rights and privileges granted to the Association under this section.

Declarant shall have the right from time to time to assign its rights contained in this section to nonprofit entities selected by Declarant, including without limitation, the Association. Declarant's right to use the Common Area and Recreational Facilities for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration. Upon the termination of Declarant's rights under this Section, the Association shall automatically assume such rights, without need for further documentation.

### 12.12 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign and correct any structure, Improvement or condition which may exist on any portion of the Community, including Lots, and a perpetual non-exclusive easement of access throughout the

Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and, except in the case of an emergency, no entry into a Dwelling Unit or other structure on a Lot shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair and pay for any resulting damage.

#### 12.13 Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or Improvements within Summerwind Plantation in connection with or in anticipation of any potential or pending claim, demand or litigation involving such design or construction unless Declarant has been first notified in writing ten (10) days prior to the inspection and given an opportunity to meet with the Owner and conduct an independent inspection.

#### 12.14 Termination of Rights.

The rights contained in this Article shall terminate upon the earlier of (a) 40 years from the date this Declaration is Recorded or (b) Declarant's Recording of a written statement that all sales activity has ceased with respect to the Community. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. This Article XII shall not be amended without Declarant's written consent so long as Declarant owns any Existing Property or Additional Property.

#### 12.15 Sales by Declarant.

Notwithstanding the restriction set forth in Section 3.1 hereof, Declarant reserves the right to sell Lots for Occupancy to Persons between 45 and 55 years of age in the Neighborhood of Harvest at Summerwind Plantation, provided such sales shall not affect the Community's compliance with all applicable State and Federal laws under which the Community may be developed and operated as an age-restricted community.

### **U. PROPERTY RIGHTS WITHIN THE COMMUNITY**

*The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association and others within or adjacent to the Community.*

#### **Article XIII Easements**

##### 13.1 Easements in Common Area.

Declarant grants to each Owner a non-exclusive right and easement of use, access and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents, the Act and any other applicable covenants;



- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:
  - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
  - (ii) suspend the right of an Owner to use any Common Area amenity (a) for any period during which any Amassment or other charge against the Owner's Lot remains delinquent and (b) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration;
  - (iv) rent any portion of any clubhouse, activity center or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;
  - (v) permit use by people from outside of Summerwind Plantation, which use may be subject to admission charges, membership fees or other user fees established in the Board's discretion;
  - (vi) mortgage, pledge or hypothecate any or all of the Common Area as security for money borrowed or debts incurred;
- (d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas", as described in Article XIII hereof;
- (e) The requirement that access to and use of recreational facilities within the Community shall be subject to the presentation of an Activity Card the Association issues for such purpose and as provided under Article XV hereof [regarding Limited Common Areas]; and
- (f) The Association's right to close or limit the use of the Common Areas, or portions thereof, while maintaining and repairing the same.

Any Owner may obtain guest passes to provide use and enjoyment of facilities in the Community to the members of his or her family, Tenants and social invitees, as applicable, subject to reasonable regulation and use fees by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the Tenant of such Lot for the period of the lease.

### 13.2 Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area or Private Amenity and between adjacent Lots due to the unintentional placement, or settling or shifting of the Improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any

point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

### 13.3 Easements for Utilities, Etc.

(a) *Installation and Maintenance.* Declarant reserves for itself, so long as Declarant owns any Existing Property or any Additional Property, perpetual non-exclusive easements throughout Summerwind Plantation (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve Summerwind Plantation cable and other systems for sending and receiving data and/or other electronic signals, drainage systems and security and similar systems;

(ii) installing underground walkways, pathways and trails, street lights and signage on property which Declarant or the Association owns or within public or private street rights-of-way, or public or private easements reserved for such purpose on a Plat;

(iii) inspecting, maintaining, repairing and replacing the utilities, stormwater infiltration trenches and related devices, infrastructure and other improvements described above; and

(iv) access to read utility meters.

Notwithstanding the above, Declarant reserves the right to grant or deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) *Utility Easements.* Declarant also reserves for itself the non-exclusive right and power to grant and Record such utility easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of any Existing Property or any Additional Property. The location of the easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed or conditioned.

(c) *Minimal Interference.* All work associated with the exercise of the easements described in subsections (a) and (b) of this section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

### 13.4 Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access and development of the Additional Property, whether or not such property is made subject to this

Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns, respectively, shall be responsible for any damage caused to the Common Area as a result of their actions. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

### 13.5 Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2 hereof. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents to abate a Governing Document violation and/or to remove any structure, thing or condition which violates the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. Any costs incurred, including reasonable attorneys' fees, shall be assessed against the Lot Owner as a Benefited Assessment.

### 13.6 Easements for Lake and Pond Maintenance and Flood Water.

Declarant reserves for itself, the Association and their successors, assigns and designees, the non-exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Area and enter upon adjacent Lots to the extent necessary to (a) install, operate, maintain and replace pumps to supply irrigation water to the Lots and Common Area (b) construct, maintain and repair structures and equipment used for retaining water and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association and their successors, assigns and designees shall have an access easement over and across any portion of the Community which abuts or contains bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this section. Declarant further reserves for itself, the Association and their successors, assigns and designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Area and Lots (but not inside a Dwelling Unit or other structure) adjacent to or within one hundred (100) feet of bodies of water and wetlands within Summerland Plantation, in order to (a) temporarily flood and back water upon and maintain water over such portions of Summerwind Plantation; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Area and (c) maintain and landscape the slopes and banks pertaining to such areas. Anyone exercising these easements shall use reasonable care in and repair any damage resulting from their intentional exercise of the easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to natural occurrences.

### 13.7 Easements for Cross-Drainage.

Every Lot and the Common Area shall be burdened with easements for natural drainage of stormwater runoff from other portions of the Community; provided, no Person shall alter the natural drainage on any Lot, modify, damage or remove any infiltration trenching or other underground drainage system located on a Lot or Common Area, or otherwise to any act which would increase materially the drainage of stormwater onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Board, and Declarant as long as it owns any Existing Property or any Additional Property.

### 13.8 Rights to Stormwater Runoff, Effluent and Water Reclamation; Stormwater Management.

Declarant hereby reserves for itself and its designees all rights to ground water, surface water, stormwater runoff and effluent located or produced within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Community for access and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent. This Section may not be amended without the consent of Declarant, and the rights created in this section shall survive termination of this Declaration.

The Association, until Johnston County accepts for public maintenance the stormwater infrastructure within the Property, will be responsible for maintenance of any stormwater management infiltration trenches and devices located underground, or within swales, channels and check dams. Such maintenance shall include removal of sediments within the swales and channels, re-stabilization of the swales and channels as needed, check dam repairs and maintenance of the vegetation cover as necessary. Owners shall be responsible for maintaining and clearing any of such stormwater infrastructure located on their Lots. Notwithstanding anything to the contrary herein, Johnston County shall not be responsible for the maintenance of the stormwater detention ponds located on the Property. The Association shall be solely responsible for the repair and maintenance of such stormwater detention ponds.

### 13.9 Access Easement Reserved.

The Declarant reserves unto itself for the benefit of Declarant, its successors and/or assigns, a non-exclusive and alienable easement and right of ingress, egress and regress over and across all Common Area and private streets and roads within the Property (as hereinafter defined) if any, for access to and from other real property of Declarant or its successors and/or assigns. Such easement shall include the ability for Declarant to complete any development obligations or other improvements on Common Area previously conveyed to the Association. Furthermore, such easement shall continue until that time when all new construction has ceased on additions to Existing Property acquired under this Section, and any damage caused by Declarant, its agents, successors and/or assigns to the private streets and roads within the Property when exercising its rights created by this Section shall be repaired at the expense of Declarant, its successors or assigns. In addition, an easement and right of ingress, egress and regress over and across all private streets and roads within the Property, if any, is hereby granted to any applicable government agency, for the purpose of fulfilling their duties, including, without limitation, law enforcement, fire protection, garbage collection, delivery of the mail and any other service related to keeping the peace and preserving the general welfare.

### 13.10 Perpetual Access Easement Over Adjoining Lots.

In the event any Dwelling Unit erected on any Lot shown on any Recorded Plat of the Property is located closer than five (5) feet to any Lot line, a perpetual access easement over the adjoining Lot is hereby established in favor of the Owner of the first Lot and its tenants and contractors. The easement shall be for the purposes of allowing the Dwelling Unit to be maintained and painted and for the servicing, maintenance, repair or replacement of any utility equipment, lines or the like. To the extent any Owner benefited by the foregoing easement causes damage to an adjoining Lot in exercising the foregoing easement rights, then the Owner of the damaged Lot shall have the right to elect among the following remedies: (i) require the benefited Owner to promptly cause such damage to be repaired to the condition existing prior to the occurrence of the damage, or (ii) cause such damage to be repaired to the condition existing prior to the occurrence of the damage, in which case the benefited Owner shall be liable to reimburse the Owner of the damaged Lot in full for the costs of repair. No fence, wall, storage shed or similar structure or any other kind of obstruction shall be permitted in the easement area that will obstruct access to the Dwelling Unit or such utility equipment or lines. Notwithstanding anything herein to the contrary or apparently to the contrary, nothing herein is intended to alter or otherwise affect any setbacks or other requirements of zoning or other municipal regulations or otherwise permit any structure to exist in violation of the same.

## **Article XIV Limited Common Areas**

### 14.1 Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. For example, Limited Common Areas may include entry features, recreational facilities, private streets, landscaped medians and cul-de-sacs, lakes, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Limited Common Areas are assigned.

### 14.2 Designation.

Initially, any Limited Common Area shall be designated as such in a Supplemental Declaration, the deed conveying such area to the Association or on a Plat (including, without limitation, by designating streets as "private"); provided, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots and/or Neighborhoods, so long as Declarant has a right to subject Additional Property to this Declaration pursuant to the terms hereof.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Members representing a majority of the total Member votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with the terms hereof, Declarant's written consent also is required.

14.3 Use by Others.

Upon approval of a majority of Owners of Lots within the Neighborhood to which any Limited Common Area is assigned, the Association may permit Owners of Lots in other Neighborhoods to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited Common Area.

**Article XV Party Walls and Other Shared Structures**

15.1 General Rules of Law to Apply.

Each wall, fence, driveway or similar structure built on the Lots which serves and/or separates any two (2) adjoining Lots or a Lot and Common Area shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XVI hereof.

15.2 Maintenance, Damage and Destruction.

Unless otherwise specifically provided in additional covenants relating to such Lots, the cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who own property benefited by the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any benefited Owner shall contribute a pro-rata share for the cost of restoration. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

**F. RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

*The growth and success of Summerwind Plantation as a community in which people enjoy living, working and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors and protection of the rights of others who have an interest in the community.*

**Article XVI Dispute Resolution and Limitation on Litigation**

16.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Summerwind Plantation without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and

until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 16.2 hereof in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to

(i) the interpretation, application or enforcement of the Governing Documents or the Act;

(ii) the rights, obligations and duties of any Bound Party under the Governing Documents;

(iii) the design or construction of non-residential improvements within the Community, other than matters of aesthetic judgment under Article IV hereof, which shall not be subject to review; or

(iv) a challenge to any decision by the Board or any decision by a Board Committee, except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 16.2 hereof:

A. any suit by the Association to collect Assessments or other amounts due from any Owner;

B. any suit by the Association to obtain a temporary restraining order (or emergency equitable relief and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);

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

D. any suit in which any indispensable party is not a Bound Party; and

E. any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 16.2(a) hereof, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

## 16.2 Dispute Resolution Procedures.

(a) *Notice.* The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) *Negotiation.* The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) *Mediation.* If the Bound Parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Raleigh/Clayton/Johnston County metropolitan area. Each Bound Party shall submit to the mediator a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within thirty (30) days after submitting the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees and each Party shall share equally all fees charged by the mediator.

(d) *Settlement.* Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Bound Parties. If any Bound Party thereafter fails to abide by the terms of such agreement, then any other Bound Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this section. In such event, the Bound Party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying Bound Party (or each one in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

### 16.3 Initiation of Litigation by Association.



In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding against Declarant or anyone else unless first approved by a vote of Members entitled to cast seventy-five percent (75%) of the total Member votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Declarant Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of Assessments, and foreclosure of liens and seeking injunctive relief for non-monetary violations;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor (exclusive of Declarant), vendor or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it; or

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings. The Association cannot sue anyone with respect to any issues on individual homes including, without limitation, construction and warranty claims, and can only sue for issues regarding the common areas.

In the matters listed above, the Directors of the Association shall be indemnified for their decisions pursuant to Section 7.6 hereof.

#### **Article XVII Mortgagee Provisions**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

##### **17.1 Notices of Action.**

An institutional holder, insurer or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder") will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of Summerwind Plantation or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of Assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within sixty (60) days;
- (c) Any lapse, cancellation or material modification of any Association insurance policy; or

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

17.2 No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

17.3 Notice to Association.

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.

17.4 Failure of Mortgagee to Respond.

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

17.5 HUD/VA Approval.

As long as there is a Declarant membership, and provided that either or both of the U.S. Department of Housing and Urban Development ("HUD") and the U.S. Department of Veterans Affairs ("VA") requires approval, the following matters shall be submitted for the required approvals: merger, consolidation or dissolution of the Association; annexation of additional property other than the Additional Property; dedication, conveyance (other than to correct errors on property descriptions or other inconsequential or immaterial conveyances) or mortgaging of Common Area; or material amendment of this Declaration or the By-Laws. In addition, provided that either or both of HUD and the VA requires approval of the following matter, then so long as HUD or VA insures or guarantees the Mortgage on any Lot, the above actions also shall require the prior approval of at least two-thirds (2/3) of the Members and the consent of Declarant. Notwithstanding anything to the contrary in this Section or in Article XIX hereto the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership or HUD or VA.

17.6 [Intentionally Omitted]

17.7 [Intentionally Omitted]

17.8 Definitions.

For purposes of this Article, "FHA" means the Federal Housing Administration (or its successor federal agency) and the term "VA" means the Veterans Administration (or its successor federal agency).

## **G. CHANGES IN THE COMMUNITY**

*Communities such as Summerwind Plantation are dynamic and constantly evolving as circumstances, technology, needs and desires and laws change, as the residents age and change over time, and as the surrounding community changes. Summerwind Plantation and its Governing Documents must be able to adopt to these changes while protecting the things that make Summerwind Plantation unique.*

### **Article XVIII intentionally Deleted**

### **Article XIX Changes in Ownership of Lots**

Any Owner, other than Declarant, desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least fourteen (14) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title and such other information as the Board may reasonably require (the "Transfer Notice"). Upon completion of the transfer, the Owner shall pay the New Member fee as described in Section 9.12 hereof. Notwithstanding the transfer of title, the transferor, in its individual capacity, shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including Assessment obligations, until the date upon which the Board receives the Transfer Notice.

### **Article XX Changes in Common Area**

#### **20.1 Condemnation.**

Whenever any part of the Common Area shall be taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment whether each Owner shall be entitled to notice thereof. The Board may convey Common Area under threat of condemnation only if approved in writing by at least sixty-seven percent (67%) of the Members in the Association and Declarant, as long as Declarant owns any Existing Property or any Additional Property.

The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within sixty (60) days after such taking, Declarant, so long as Declarant owns any property described in Exhibit A or Exhibit B of this Declaration, and at least sixty-seven percent (67%) of the total Members in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3 hereof regarding funds for the repair of damage or destruction shall apply.

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

#### **20.2 Partition.**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. While the Common Area is owned by the Association, no suit for partition shall be brought.

### 20.3 Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Johnston County, the Town of Clayton, or to any other local, state or federal governmental or quasi-governmental entity, subject to such approval as may be required by Section 17.5 hereof.

## **Article XXI Amendment of Declaration**

### 21.1 By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until a Lot is conveyed to a Person other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Lots; (d) to correct clerical or technical errors; or (e) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

So long as Declarant owns property described on Exhibit A or Exhibit B for development as part of Summerwind Plantation, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no materially adverse effect upon the rights of the Members. In addition, Declarant shall have the right to amend provisions affecting particular Lots for any reasons with the prior written consent of the Owners thereof.

### 21.2 By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total votes in the Association, including seventy-five percent (75%) of the Member votes held by Members other than Declarant, and Declarant's consent, so long Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with the terms hereof. In addition, the approval requirements set forth in Article XVI hereof shall be met, if applicable. Any amendments approved as provided herein shall be Recorded in every county in which a portion of the Community is located, and shall be indexed under the name of the Community and the name of the Association.

### 21.3 Validity and Effective Date.

No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall only become effective upon Recording. Any procedural challenge to an amendment must be made within one year of its Recordation or such amendment shall be presumed to have been validly adopted.

21.4 Exhibits.

Exhibit A and Exhibit B attached to this Declaration are incorporated by this reference, and amendment of such exhibits shall be governed by this Article. Exhibit C is incorporated by reference and may be amended as provided in Article III hereof or in accordance with this Article. Exhibit D is attached for informational purposes and may be amended as provided herein or therein.

21.5 Severability.

Invalidation of any one of the covenants and restrictions in this Declaration by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

**DECLARANT:**

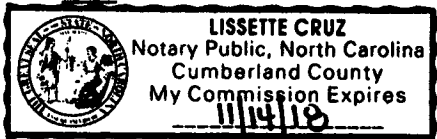
OAKMONT DEVELOPMENT PARTNERS, LLC, a North Carolina limited liability company

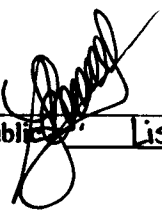
By:   
Patrick McKee, Member/Manager

**NORTH CAROLINA**  
Cumberland  
~~WAKE~~ COUNTY

I, a Notary Public for said County and State, do hereby certify that Patrick McKee, personally appeared before me this day and acknowledged that he is the Member/Manager of OAKMONT DEVELOPMENT PARTNERS, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed voluntarily in its name by himself as its Manager.

WITNESS my hand and notarial seal or stamp, this the 13 day of January, 2014.



  
Notary Public: Lisette CRUZ

My Commission Expires: 11/14/18

**EXHIBIT A**

**THE PROPERTY**

**TRACT ONE:**

BEING those certain lots numbered 1 – 40, inclusive, all that area labeled “common open space”, containing 3.936 acres and all areas labeled “Summerwind Plantation Drive 60’ R/W (public)” and “Horizon Trail 50’ R/W (public)” containing 2.393 acres, all as shown on a map entitled “Subdivision Plat of The Harvest at Summerwind Plantation, Cleveland Township, Johnston County, North Carolina” dated November 6, 2007, prepared by True Line Surveying, P.C. and recorded in Plat Book 71, Pages 495 and 496, Johnston County Registry.

**TRACT TWO:**

BEING all of those lots numbered 1 – 22, inclusive, 81 – 91, inclusive, 130 – 143, inclusive, the area labeled “Marsh Creek Drive 40’ R/W (private)”, the area labeled “Summerwind Plantation Drive 40’ R/W (private)”, and the area labeled “20’ Sanitary Sewer Easement containing 11,457 SF or 0.263 acres” as shown on a plat entitled “Subdivision Plat of The Trace at Summerwind Plantation, Cleveland Township, Johnston County, North Carolina” dated November 6, 2007, prepared by True Line Surveying, P.C. and recorded in Plat Book 72, Pages 39 and 40, Johnston County Registry.

**EXHIBIT B**

**ADDITIONAL PROPERTY**

Tract One:

Being all of Tract One, containing 12.166 acres as shown on a map entitled "Subdivision Plat of the Summerwind Wellness and Fitness Center for Summerwind Plantation, LLC, Cleveland Township, Johnston County, North Carolina" dated September 13, 2007, prepared by True Line Surveying, P.C., and recorded in Plat Book 71, Page 90, Johnston County Registry.

Tract Two:

Being all of Tract 3, containing 14.919 acres, Tract 4, containing 6.048 acres, Tract 5, containing 5.029 acres, Tract 6, containing 3.758 acres, Tract 7, containing 11.519 acres, and an area labeled "N/F Forrest Glenn Johnson, Donald Lee Johnson remaining area containing 1,847,765 square feet or 42.419 acres", all as shown on a plat entitled "Subdivision Plat for Forrest Glenn Johnson and Donald Lee Johnson, Cleveland Township, Johnston County, North Carolina" dated October 4, 2007, prepared by True Line Surveying, P.C., and recorded in Plat Book 71, Page 172, Johnston County Registry.

Tract Three:

Being a tract of land located on the south side of Glen Road, bordered on the west by Glen Road Townhomes, on the south by the G.P. Sherrill property as described in a deed recorded in Deed Book 529, Page 307, Johnston County Registry, and on the east by I40/42 Assoc. Development property, as more particularly shown on Attachment A attached hereto and incorporated herein by reference, containing approximately 25 acres, more or less. SAVE AND EXCEPT a portion of the above described property previously conveyed to Summerwind Plantation, LLC by Forrest Glenn Johnson and wife, Rosa Lou Johnson by deed recorded in Book 3467, Page 88, Johnston County Registry, the legal description of which is incorporated herein by reference.

Tract Four:

Being all of that tract of land containing 2.62 acres conveyed to Summerwind Plantation, LLC by deed recorded in Book 3467, Page 88, Johnston County Registry, the legal description of which is incorporated herein by reference.

Tract Five:

Being all of Tract 2, containing 53.04 acres, as shown on a map entitled "Survey for: Summerwind Plantation Phase I, Cleveland Township, Johnston County, North Carolina" dated 5/10/06, prepared by Southwind Surveying and Engineering, Inc. and recorded in Plat Book 68, Page 453, Johnston County Registry.

SAVE AND EXCEPT any portion of the above described property located within Tract One and Two on Exhibit A, the legal description of which is incorporated herein by reference.



**Tract Six:**

Being a small portion of acreage located at the northern portion of Tract 5 described above which is located within Wake County, North Carolina, the dimensions of which are more particularly described on Exhibit B attached hereto and incorporated herein by reference. Said property is a small portion of Tract 2 containing 53.04 acres as shown on a map recorded in Plat Book 68, page 453, Johnston County Registry.

**Exhibit C****Initial Use Restrictions**

The purpose of Design Guidelines and Use Restrictions is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all Improvements or activities which fall outside of "the norm". In fact, it is expressly intended that the Reviewer under Article IV and the Board, as appropriate, have discretion to approve or disapprove items or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Lot under one set of circumstances, the same thing may be disapproved for another Lot under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it estop the Board from taking enforcement action in any appropriate circumstances.

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

(a) General. When used in these Use Restrictions, the phrase "Visible from Neighboring Property" shall mean, with respect to any given object, that the object is or would be visible to a six-foot tall person standing at ground level on any part of the neighboring property at an elevation no greater than the elevation of the base of the object being viewed, except where the object is visible solely through a view fence and would not be visible if the view fence were a solid fence.

(b) Animals and Pets. No animals of any kind, including livestock and poultry, shall be raised, bred or kept on any portion of the Community, except that for each Dwelling Unit there shall be permitted up to a total of three (3) dogs or three (3) cats or a combination of dogs and cats not to exceed three (3) in total, no more than two (2) birds, and a reasonable number, as determined by the Board, of other usual and common household pets, subject to compliance with applicable local laws. In no event, however, shall monkeys, snakes, pigs or ferrets be permitted in any Dwelling Unit. Pets which are permitted to roam free or which, in the Association's sole discretion, endanger the health, make objectionable noise or constitute a nuisance or inconvenience to other Owners or residents of any portion of the Community shall be removed from the Community upon the Board's request at the Owner's expense. If the Owner fails to honor such request, the Board may cause the pet to be removed at the Owner's expense. The Board may adopt reasonable rules designed to minimize damage and disturbance to other Owners and Residents, including rules requiring damage deposits, waste removal, leash controls, noise controls, more restrictive pet occupancy limits than those set forth above based on the size and facilities of the Dwelling Unit and fair share use of the Common Area or Neighborhood Facilities; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept in the Community in compliance with the rules in effect prior to the adoption of such a rule. Nothing in this paragraph shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of Residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No pets shall be kept, bred or maintained for any commercial purpose. As of the date hereof, Johnston County ordinances require dogs, cats and certain other animals to be maintained on a leash when off their owner's property, except in

certain limited circumstances. It is each Owner's responsibility to comply with Johnston County leash laws, as they may be amended from time to time.

(c) Wildlife. Capturing, killing or trapping wildlife is prohibited within the Community, except for trained professionals in circumstances imposing an imminent threat to the safety of Persons or pets. Feeding wildlife is prohibited within the Community, except for limited and reasonable use of bird feeders and squirrel feeders.

(d) Firearms or Other Weapons. The carrying, use or discharge of firearms or other weapons within the Community is prohibited. The term "firearms or other weapons" includes, but is not limited to, "B-B" guns, pellet guns, knives, swords, cross-bows and other firearms or other weapons of all types, regardless of size.

(e) Nuisances. No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife or air quality within the Community or which results in unreasonable levels of sound or light pollution, or unreasonably creates a private or public nuisance.

(f) Games and Driveways. Garage doors shall remain closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons. The interior of all garages shall be maintained in a neat, clean and sightly condition. Garages shall be used only for parking vehicles and storage and shall not be used or converted for living or recreational activities.

(g) Storage of Goods. Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment or other goods and chattels on the Common Area (except by the Association), or, if not in active use, any portion of a Lot which is viable from outside the Lot is prohibited. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Parcel, except: (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction or modification) of a building, appurtenant structures or other Improvements; and (b) that which Declarant or Association may permit or require for the development, operation and maintenance of Summerwind Plantation.

(h) Prohibited Conditions. The following conditions, structures, or activities are prohibited on any Lot.

(i) Guest House (except as initially constructed by Declarant or approved by Declarant as part of the initial construction of a Dwelling Unit on a Lot);

(ii) Dog runs and animal pens of any kind, if such structures are Visible from Neighboring Property;

(iii) Shacks or other structures of a temporary nature on any Lot except as may be authorized by Declarant during the initial construction of Improvements within the Community. Temporary structures used during the construction or repair of a Dwelling Unit or other Improvements shall be removed immediately after the completion of construction or repair;

(iv) Flagpoles; provided, no more than two (2) flags may be displayed using a bracket or other approved device mounted to the Dwelling Unit so long as the size of

the flag displayed does not exceed that of a standard United States flag (which shall in all events be no larger than 4 feet by 6 feet and may be further limited as determined in the Board's discretion);

(v) Statues, lawn ornaments and yard decorations of any size or type must be placed so as not to be visible from Neighboring Property; and

(vi) Outside clotheslines or other outside facilities for drying or airing clothes.

In any event and notwithstanding the above list of prohibited conditions, as set forth in Article IV of this Declaration, any structure, Improvement, or thing proposed for construction, erection, installation, or placement on a Lot requires prior Reviewer approval unless otherwise specifically exempt under the Design Guidelines.

(i) Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort or serenity of the occupants and invitees of other Dwelling Units.

No noxious, illegal or offensive activity shall be carried on upon any portion of the Community, which in the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance or nuisance to persons using the Common Area or to the occupants and invitees of other Dwelling Units.

(j) Signs. No sign shall be erected within the Community, except (a) those permitted by the Design Guidelines, as the same may be amended from time to time, and (b) political signs (which shall be allowed only if posted no more than 45 days before the election at issue and if removed no more than seven (7) days after the election at issue). The signs allowed by clause (b) of the foregoing sentence shall only be allowed in the front yard of a Lot and within ten (10) feet of the foundation of the Dwelling Unit. All other signs may be posted only if the prior consent of the Board is obtained. These restrictions shall not apply to signs installed by Declarant. The Board and Declarant shall have the right to erect signs as they, in their discretion, deem appropriate.

(k) Holiday Decorations. Owners may display holiday decorations located or visible from outside their Dwelling Units if the decorations are of the kinds normally displayed in single-family residential neighborhoods, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Holiday decorations may be displayed in season only from November 1 to January 31 and, during other times of the year, from one week before to one week after any nationally recognized holiday.

(l) Antennas and Satellite Dishes. No antenna, satellite dish or other device for the transmission or reception of television or radio (including amateur or ham radios) signals is permitted outside the Dwelling Unit, except those devices whose installation and use is protected under federal law or regulations (generally, certain antennae under one meter in diameter). Notwithstanding such protection, Residents are encouraged to obtain ARC approval before any installation, and an application for such an antenna or other device will be granted only if:

(i) First, the antenna or other device is designed for minimal visual intrusion (*i.e.*, is located in a manner that minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and

(ii) Second, the antenna or other device complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (*i.e.*, without precluding reception of a quality signal or unreasonably increasing the cost of the antenna or device).

(iii) One satellite dish antenna measuring one meter or less in diameter may be erected on any lot. Residents are encouraged to place any satellite dish antenna in the back yard, on the back or side of the house below the roofline, if reception is available at that location. If the installation of a satellite dish antenna meets the foregoing requirements, no ARC approval is required.

The Architectural Review Committee shall consider any such application on an expedited basis, but to avoid undue delay, residents may request ARC approval within 10 (ten) days following an installation.

(m) Trash Containers and Collection. No garbage or trash, compost piles or containers shall be placed or kept on any Lot, except in covered containers of a type, size and style which are pre-approved by the ARC or specifically permitted under the Design Guidelines, or as required by the applicable governing jurisdiction. Such containers shall not be Visible from Neighboring Property except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

(n) Above-Ground Jacuzzi Spa Equipment. All above-ground jacuzzi spa equipment stored on any Lot shall be screened so as to be neither Visible from Neighboring Property nor able to be seen through any view fence.

(o) Unsightly or Unkempt Conditions. All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate within, upon or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Community.

Woodpiles or other material shall be stored in a manner so as not to be Visible from Neighboring Property and not to be attractive to rodents, snakes, and other animals and to minimize the potential danger from fires. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Community. No activities shall be conducted upon or adjacent to any Lot or within Improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be

lighted or permitted, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace.

(p) Garage Sales. Except as expressly set forth herein, garage sales, yard sales and any similar rummage-type sales are prohibited throughout the Community. The Association may organize or sponsor a Community-Wide garage sale event from time to time, subject to more detailed provisions as the Association may enact in the rules and regulations, but only Owners, Occupants and their families may participate in such events, and the Association may opt to charge a registration fee for participation, as a seller, in such events.

(q) Vehicles and Parking. The term "vehicles", as used in this Section, shall include, without limitation, automobiles, trucks, trailers, motorcycles, campers, vans and recreational vehicles.

No vehicle may be left upon any portion of the Community except in a garage, driveway or other area designated by the Board. No person shall park any recreational vehicles, trailers, campers or other watercraft, stored vehicles and unlicensed vehicles or inoperable vehicles within the Community other than in enclosed garages; provided, boats, mobile homes, commercial trucks, vans or buses may not be kept or stored on a Lot. This Section shall not apply to emergency vehicle repairs.

Notwithstanding the above, for purposes of cleaning, loading, unloading and short term parking, recreational vehicles may be parked on the Lot's driveway for period not exceeding seventy-two (72) hours no more frequently than every thirty (30) days. Owners must obtain a recreational vehicle permit for such short term parking from the Association office. If the use of golf carts is permitted by Johnston County, the Association may implement rules governing the use of golf carts that are more stringent than those of Johnston County.

(r) Wetlands, Lakes and Other Water Bodies. All wetlands, lakes, ponds and streams within the Community, if any, shall be aesthetic amenities only, and no other active use of lakes, ponds, streams or other bodies of water within the Community, except that Members and their guests are authorized to fish, provided any and all fish caught are released back into the body of water, in certain bodies of water within the Common Areas as may be designated by the Association from time to time. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or other bodies of water within or adjacent to the Community

(s) Solar Equipment. No solar heating equipment or device is permitted outside the Dwelling Unit, except such devices whose installation and use is protected by federal or North Carolina law. Notwithstanding such protection, an application for such equipment or device must be submitted for approval under Article IV prior to installation and approval will be granted only if

(i) First, such equipment or device is designed for minimal visual intrusion when installed (*i.e.*, is located in a manner which minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and

(ii) Second, the equipment or device complies to the maximum extent feasible with the Design Guidelines within the confines of the applicable governmental regulations.

(t) Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning or evaporative cooling units or appurtenant equipment may be mounted, installed or maintained on the roof of any Dwelling Unit or other building so as to be Visible From Neighboring Property.

(u) No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot or Parcel unless such tanks are buried underground. Nothing herein shall be deemed to prohibit use or storage upon any Lot or Parcel of an aboveground propane or similar fuel tank with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace or a spa or "hot tub", so long as any such tank either; (a) has a capacity of ten (10) gallons or less or (b) is appropriately stored, used and/or screened, in accordance with the Architectural Committee Rules or as to otherwise approved by the Architectural Committee, so as not to be Visible from Neighboring Property.

**Exhibit D**

**By-Laws of Summerwind Plantation, LLC Homeowners Association, Inc.**



OWNER HEREBY CONSENTS TO THE ABOVE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ALL RESIDENTIAL NEIGHBORHOODS IN SUMMERWIND PLANTATION

Lot Numbers : 1, 2, 7, 16, 17, 18, 84, 88, 89, 90 and 91  
Neighborhood: The Trace

H & H Constructors, Inc

By: [Signature] (Seal)  
Name Printed: Jack F. Rostetter  
Title: Vice President / CEO

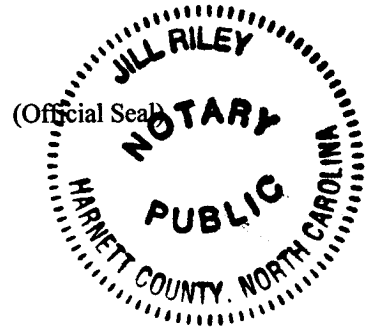
COUNTY OF Harnett, NORTH CAROLINA

I, the undersigned Notary Public, certify that the following person(s) personally appeared before me this day, and I have seen satisfactory evidence of the principals' identity, by (choose one)  a current state or federal identification with the principals' photograph in the form of a driver's license, or  I have personal knowledge of the identity of the principals, or  a credible witness has sworn to the identity of the principals, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jack F. Rostetter, Vice President, H & H Constructors, Inc.

Date: 9 January 2014

[Signature]  
Notary Name: Jill Riley  
Printed or Typed Name

My commission expires: 3 August 2015



**OWNER HEREBY CONSENTS TO THE ABOVE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ALL RESIDENTIAL NEIGHBORHOODS IN SUMMERWIND PLANTATION**

Lot Numbers : 3, 13-15, 19-21, 85, 87  
Neighborhood: The Trace

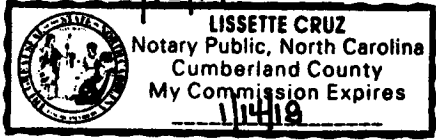
McKee Homes, LLC

By: [Signature] (Seal)  
Name Printed: Patrick McKee  
Title: member

COUNTY OF Cumberland, NORTH CAROLINA

I, the undersigned Notary Public, certify that the following person(s) personally appeared before me this day, and I have seen satisfactory evidence of the principals' identity, by (choose one) [ ] a current state or federal identification with the principals' photograph in the form of a driver's license, or [x] I have personal knowledge of the identity of the principals, or [ ] a credible witness has sworn to the identity of the principals, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Patrick McKee

Date: 1/13/14



(Official Seal)

[Signature]  
Notary Name: Lissette Cruz  
Printed or Typed Name  
My commission expires: 1/14/18

**Exhibit D**

**By-Laws of Summerwind Plantation Homeowners Association, Inc.**

**Article I**

**Name, Principal Office and Definitions**

1.1 **Name.** The name of the corporation is Summerwind Plantation Homeowners Association, Inc. (the "Association").

1.2 **Principal Office.** The Principal office of the Association shall be located within the State of North Carolina. The Association may have such other offices, either within or outside the State of North Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3 **Definitions.** The words used in these By-laws shall be given their normal, commonly understood definition. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions and Restrictions for Summerwind Plantation Development, filed in the Registry of Deeds of Johnston County, North Carolina, as it may be amended (the "Declaration"), unless the context indicates otherwise.

**Article II**

**Association: Membership, Meetings, Quorum, Voting, Proxies**

2.1 **Membership.** The Association shall have one class of membership as more fully set forth in the Declaration and the Articles of Incorporation, the terms of which pertaining to membership are incorporated by this reference.

2.2 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or such other suitable place convenient to the Members as the Board may designate, either within the Properties constituting of Summerwind Plantation or as convenient as possible and practical.

2.3 **Annual Meetings.** The first regular meeting of the Association and subsequent annual meetings shall be set by the Board.

2.4 **Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by at least ten percent (10%) of the total votes in the Association.

2.5 **Notice of Meetings.** Unless otherwise required by the Declaration or by the Articles of Incorporation, written or printed notice stating the place, day and the hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 days nor more than 60 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. Notice may also be sent by electronic mail over the internet (email) to an electronic mailing address designated by the Lot Owner.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of the meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Association, with postage prepaid.

2.6. **Waiver of Notice.** Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed waiver by such Member of notice of the time, date and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 **Adjournment of Meetings.** If any meeting of the Association cannot be held because a quorum, as defined in Section 2.11, is not present, Members or their proxies holding a majority of the votes represented at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time of the original meeting was called except as otherwise provided in the Declaration or in the Articles of Incorporation. At the reconvened meeting, if a quorum is present, any business may be transacted, which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8 **Voting.** The voting rights of the Members shall be set forth in the Declaration, Articles of Incorporation and in these By-Laws, and such voting right provision are specifically incorporated by this reference.

2.9 **Proxies.** At all meetings of Members, each Member may vote in person (if a corporation, partnership or trust, through any officer, director, partner or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of North Carolina law. Each proxy shall be in writing, shall duly specify the Lot or Residence for which it is given, and shall be signed by the Member or its duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. A proxy that fails to specify the Lot or Residence for which it is given shall be presumed to cover all votes, which the Member giving such proxy is entitled to cast. In the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot or Residence for which it is given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10 **Majority.** As used in the Governing Documents, the term "majority" shall mean the votes of Lot Owners totaling more than fifty percent (50%) of the total eligible number.

2.11 **Quorum.** Except as otherwise provided in these By-Laws or in the Declaration, or in the Articles of Incorporation, the presence, in person or by proxy, of Members representing ten percent (10%) of the total votes in the Association shall constitute a quorum at all meetings of the Association.

2.12 **Conduct of Meetings.** The President, or appointed chairman, shall preside over all meetings of the Association, the Secretary, or appointed person, shall keep the minutes of the meeting and record in a minute book all resolutions adopted and all other transactions occurring at such meeting.

2.13 **Action Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting.

2.14 **Action by Written Ballot.** Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. A written ballot shall: (a) set forth each proposed action, (b) provide an opportunity to vote for or against each proposed action, and (c) indicate the time by which a ballot shall be received by the Association in order to be counted. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast. A written ballot may not be revoked.

### Article III

#### **Board of Directors: Number, Power, Meetings**

##### **A. Composition and Selection.**

3.1 **Governing Body: Composition.** The affairs of the Association shall be governed by a Board of Directors, each of whom will have one (1) equal vote. The directors shall be Members or full-time dues paying Residents; provided no Owner or Resident occupying the same Living Unit may serve on the Board at the same time. A "Resident" residing in the Neighborhoods known as "The Trace", shall be any natural person 21 years of age or older whose principal place of residence is located within the Properties. A "Resident" residing in the Neighborhoods other than "The Trace", shall be any natural person 55 years of age or older whose principal place of residence is within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, employee or trust officer of such a Member shall be eligible to serve as a director, unless otherwise specified by written notice to the Association signed by each Member; provided, no Member may have more than one such representative on the Board at a time.

3.2 **Number of Directors.** The Board shall consist of three (3) to seven (7) directors, as provided in Section 3.3 and 3.4 below. The initial Board shall consist of three (3) directors as identified in the Articles of Incorporation. The Board shall continue to consist of three (3) directors during the Declarant Control Period.

### 3.3 **Nominations and Election Procedures**

- (a) **Nomination of Directors.** Nominations for election to the Board of Directors may be made by a Nominating Committee or from the floor or at a meeting called for the purpose of electing a Board of Directors. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members or representatives of Members. The Nominating Committee shall be appointed by the Board of Directors not less than 30 days prior to each election to serve a term of one year or until their successors are appointed, and such an appointment shall be announced at each such election. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled as provided in Section 3.4 below. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and solicit votes.
- (b) **Election Procedures.** Elections shall be held at the Association's annual or special meeting held for elections, unless the Board determines that such elections shall be held by mail. If elections are held by mail, the Board or an election committee appointed by the Board shall open and count the ballots on the election day.

Each Owner may cast the entire vote assigned to his Lot or Residence address for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

### 3.4 **Declarant Controlled Board of Directors.**

- (a) The initial directors of the Association, who shall serve as directors until their successors shall be elected and qualify, are set forth in the Articles of the Association. Subsequent to the initial directors, during the Declarant Control Period, the number of directors of the Association shall be three (3) until the earlier to occur of (a) the expiration of the Declarant Control Period, or (b) the date such right is relinquished by the Declarant by a signed document recorded in the Register of Deeds terminating the right to appoint a majority of the directors of the Association. Except as otherwise provided in subparagraph (b) of this Section, a majority of the directors of the Association shall be appointed by the Declarant until the earlier to occur of (a) the expiration of the Declarant Control Period, or (b) the date such right is relinquished by the Declarant by a signed document recorded in the Register of Deeds terminating the right to appoint all the directors of the Association. The Declarant shall appoint the aforementioned directors by written notice sent to the Secretary of the Association, which appointment shall be effective upon its receipt by the Secretary.

- (b) **Election of all Directors by Members.** The members shall be entitled to elect one (1) member to serve on the Board during the Declarant Control Period. The member elected director shall serve a one (1) year term. Upon the earlier to occur of (a) the expiration of the Declarant Control Period, or (b) the date such right is relinquished by the Declarant by a signed document recorded in the Register of Deeds terminating the right to appoint a majority of the directors of the Association, the (i) number of directors of the Association shall be not less than three (3) and no more than seven (7), as such number is determined by the Board or members on an annual basis, (ii) the entire Board shall be elected, pursuant to the following sentence, by the members of the Association (including the Declarant as a member for any Lot owned) with one (1) vote for each Lot owned, and (iii) all members of the Board elected by the members shall meet the criteria of Section 3.1 of these By-Laws. The directors shall be elected at the annual meeting of members; and those persons who receive the highest number of votes by the members entitled to vote in the election at a meeting at which a quorum is present shall be deemed to have been elected.
- (c) **Terms of Directors.** The directors elected by the membership at the first annual meeting of members after the expiration of the Declarant Control Period shall be divided into three (3) classes, to serve in the first instance for terms of one (1) year, two (2) years, and three (3) years, respectively, and until their successors shall be elected and shall qualify, and thereafter the successors in each class of directors shall be elected to serve for terms of three (3) years and until their successors shall be elected and shall qualify. In the event of any increase in the number of directors, the additional directors shall be so classified such that all classes of directors shall be increased equally, as nearly as may be, and, in the event of any decrease in the number of directors, all classes of directors shall be decreased equally, as nearly as may be. Except as specifically provided above, each director shall hold office for a term of three (3) years or until such director's death, resignation, retirement, removal, or disqualification. Despite the expiration of a director's term, the director continues to serve as such until the director's successor is elected and qualifies, or there is a decrease in the number of directors. The term of the First Board of Directors elected by the membership shall be staggered as follows: The nominee receiving the most votes shall be elected for a term of three (3) years; the nominee receiving the next highest number of votes shall be elected for a term of two (2) years; and the nominee receiving the third highest number of votes shall be elected for a term of one (1) year. Except for directors elected to fill a vacancy (who shall hold until the expiration of the term of the person they are replacing, all directors elected by member vote after the first meeting shall hold office for a term of three (3) years. All ties shall be broken by coin-toss. An elected director may run for re-election.

3.5. **Removal of Directors and Vacancies.** Any director elected by the Members (not those appointed by the Declarant) may be removed, without or without cause, by Members holding a majority of the votes of all members present and entitled to vote at any meeting of members at which a quorum is present. Any directors removal is sought shall be given notice prior to any meeting called for that

purpose. Upon removal of director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three or more consecutive unexcused absences from Board meetings, or who is more than thirty (30) days delinquent or is the representative of a Member who is so delinquent in the payment of any dues or assessment or other charge due to the Association, may be removed by the majority of the directors present at a regular or special meeting at which a quorum is present, and the board may appoint a successor to fill the vacancy for the remainder of the term. In the event of the death, disability or resignation of a director elected by Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members shall elect a successor for the remainder of the term. A director appointed by the Declarant may be removed with or without cause by Declarant by written notice of such removal sent by the Declarant to the Secretary of the Association which removal shall be effective when notice of removal is received by the Secretary. A vacancy of a directorship appointed by the Declarant shall be filled by the Declarant by written notice of such appointment to the Secretary.

## **B. Meetings.**

3.6 **Organization Meetings.** The first meeting of the Board following each annual meeting of the membership shall be held within thirty (30) days thereafter at such time and place as the Board shall fix.

3.7 **Regular Meetings.** Regular Meetings of the Board may be held on such notice and at such time and place as a majority of directors shall determine.

3.8 **Special Meetings.** Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Vice President or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail; (c) telephone communication, either directly to the director or to a person at the director's office or home would be reasonably be expected to communicate such notice to the director; or (d) facsimile, computer email, fiber optics or such communication device. All such notices shall be given at the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least seven business days before the time set for the meeting. Notices by personal delivery, telephone or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

3.9 **Waiver if Notice.** The transaction of any meeting of the Board however called or noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if: (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of the meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10 **Telephone Participation in Meetings.** Members of the board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.



3.11 **Quorum of Board of Directors.** At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of the majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action is taken is approved by at least a majority of the required quorum for the meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12 **Compensation.** Directors shall not receive any compensation from the Association for acting as such. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.13 **Conduct of Meetings.** The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meeting.

3.14 **Open Meetings.** At regular intervals, the Board shall provide the Owners an opportunity to attend a portion of a Board meeting and to address the Board at such meeting. 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. The President or presiding officer may call the Board of Directors into closed session on sensitive matters such as personnel, litigation strategy, or hearings with respect to violations of the Governing Documents. Any final action taken by the Board of Directors in closed session shall be recorded in the minutes.

3.15 **Action Without a Formal Meeting.** Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, set forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. **Powers and Duties.**

3.16 **Powers.** The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and performing all responsibilities and exercising all rights of the Association as set forth in the Declaration and Articles of Incorporation and as provided by law. The Board may do or cause to be done all acts and things as are not by the Declaration, Articles, these By-Laws, or North Carolina law directed to be done and exercised exclusively by the membership generally.

3.17 **Duties.** The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expense and any Limited Common Area expenses;

- (b) levying and collecting, such dues and assessments from the Owners;
- (c) providing for the operation, care, upkeep and maintenance of the Common Areas;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and, and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties.
- (e) depositing all funds on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association; provided, any reserve fund may be deposited, in the director's best business judgement, in depositories other than banks.
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions and improvements to or alterations of the Common Areas in accordance with the Declarations and these By-Laws;
- (i) enforcing by legal means the provisions of the Declaration and Articles of Incorporation and bring any proceedings which may be instituted on behalf of or against the Owner concerning the Association; provided, the Board shall not be obligated to take action to enforce any restriction or rule which the Board in the exercise of its business judgement determines that the Association should not take such enforcement action;
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof and filing and adjusting claims as appropriate;
- (k) paying the cost of all services rendered to the Association;
- (l) keeping books with detailed accounts of the receipts and expenditures of the Association;
- (m) making available to any prospective purchaser of a Lot, any Owner and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Declaration and Articles of Incorporation and all other books records, and financial statements of the Association, as provided in Section 6.4;
- (n) permitting utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Properties;

- (o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required under North Carolina law, the Articles of Incorporation or the Declaration; provided, however, that no indemnification shall be paid for a financial obligation and as a Member of the Association;
- (p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration;
- (q) Contracting with a professional property management firm to perform any and all of the above referenced duties, in the discretion of the Board.

3.18 **Right of Declarant Member to Disapprove Actions.** The Declarant, its representative or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was purposed or, in the case any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the purposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services, which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.19 **Management.** The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority or those duties set forth in Sections 3.17(a), 3.17(b), 3.17(f) and 3.17(i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board. All management contracts shall contain a provision, which allows the Association, after ninety days written notice, to terminate such contracts.

3.20 **Accounts and Reports.** The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees,

prizes, gifts, or otherwise; anything of value received shall benefit the Association;

- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (f) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of change in financial position for the fiscal year. Such annual report on an audited, reviewed or compiled basis, as the Board determines, by an independent public accountant.

3.21 **Borrowing.** The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided in Article IX, Section 9.5 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed twenty-five percent (25%) of the budgeted gross expenses of the Association for that fiscal year.

3.22. **Right to Contract.** The Association shall have the right to contract with any person for the performance of various duties and functions as set forth in the Governing Documents. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with owners associations outside the Property.

3.23 **Enforcement.**

- (a) **General Remedies.** Every owner and occupant of any Lot, or Living Unit, shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association to recover sums due, for damages, injunctive relief or any other remedy available at law and equity.
- (b) **Enforcement/Sanctions.** The Board may impose sanctions for violations of Governing Documents after notice and a hearing in accordance with the procedures set forth in subsection (c). Such sanctions may include, without limitation:
  - (i) Imposing reasonable monetary fines which shall constitute a lien upon the Lot, or Living Unit of the violator;
  - (ii) Suspending an Owner's right to vote;
  - (iii) Suspending any person's right to use any amenities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from the Lot, or Living Unit;
  - (iv) Suspending any services provided by the Association to an Owner or the Owner's Lot, or Living Unit if the Owner is more

than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association; and

- (v) Levying Benefited Assessments to cover costs incurred in bringing a Lot, or Living Unit into compliance with the Governing Documents.

(c) **Hearing.** Except as may be otherwise specifically authorized by the Governing Documents, and permitted by the Governing Documents, the Board shall not (i) impose a fine or penalty, (ii) undertake permitted remedial action, or (iii) suspend voting or infringe upon other rights of a Member or other occupant of a Lot, or Living Unit, for violations of the Governing Documents, or for Assessments or other amounts due and owing to the Association remaining unpaid for a period of thirty (30) days, or longer, unless and until the following procedure is completed: Written demand to cease and desist from an alleged violation shall be served upon the Owner specifying (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than five (5) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation may result in the imposition of a sanction after notice and hearing if the violation is not continuing.

(i) **Notice.** At any time within twelve (12) months following receipt of notice of the alleged violation, the Board, or an adjudicatory panel appointed by the Board, shall serve the Owner with a written notice of a hearing to be held by the Board of the Association or an adjudicatory panel appointed by the Board; provided, however, any adjudicatory panel appointed by the Board shall be composed of members of the Association who are not officers of the Association or members of the Board. The notice shall contain: (i) the nature of the alleged violation; (ii) the time and place of the hearing, which shall not be less than ten (10) days from the giving of the notice; (iii) an invitation to attend the meeting and produce any statement, evidence and witness on his or her behalf; and (iv) the possible sanction to be imposed. The notice prescribed herein may be served by mailing a copy of said notice to the alleged violator by placing said notice in the United States mail, postage prepaid, addressed to the address provided to the Association by the Owner, or if no such address is provided, to the address of the Owner's Lot, or Living Unit.

(ii) **Hearing.** The hearing shall be held in a meeting of the Board (the meeting, or at least the portion thereof in which the hearing is held, shall be closed to the general membership) or an adjudicatory panel appointed by the Board pursuant to the notice affording the member a reasonable opportunity to be heard. The minutes of the meeting shall contain a written

statement of the results of the hearing and the sanction, if any, imposed. In addition, a written statement of the results of the hearing and the sanction, if any, imposed shall be mailed by the United States mail, postage prepaid, by the Association to the Owner.

- (iii) **Appeal.** If the hearing is held before an adjudicatory panel, following such hearing and notice of a decision adverse to the violator, the Owner shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the managing agent of the Association, President or Secretary of the Association within fifteen (15) days after the date of the decision, said written notice to contain information by which the Board may notify the Owner of the date of the appeal hearing. If no adjudicatory panel is appointed by the Board, no right of appeal shall exist.
- (iv) **Sanction as Assessment.** Pursuant to the provisions of this Section, a fine may be imposed by the Association is an amount not exceeding One Hundred and No/100 Dollars (\$100.00) (or any greater amount as may be provided otherwise by law or the North Carolina Planned Community Act) per violation of the Governing Documents and without further hearing, for each day after five (5) days after the decision to impose such fine that the violation occurs. Any such fine shall be an assessment as set forth in this Declaration. If it is decided pursuant to the provisions of this Section that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.
- (d) **Self-Help Remedies.** The Board or such other Association agent with the Board's approval, may elect to enforce any provision of the Governing Documents by self-help or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in this Article.
- (e) **Cumulative Remedies/Attorneys' Fees.** The Association shall have all powers and remedies under the Governing Documents which shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action.
- (f) **Association's Right Not to Take Action.** The Association shall not be obligated to pursue enforcement action in any particular case, such decisions to be within the discretion of the Board, except that the Board shall not be arbitrary or capricious in taking enforcement action. Such a decision shall not be construed

a waiver of the right of the Association to enforce such covenant, restriction, rule or provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, rule or provision, nor shall it preclude any Owner from taking action at law or in equity to enforce the Governing Documents.

- (g) **Enforcement by Owner.** Nothing set forth in this Article shall prevent any aggrieved Owner from instituting any available remedy in law or in equity for a violation of the Governing Documents.

#### Article IV

##### **Officers**

4.1 **Officers.** The officers of the association shall be Owners or full-time residents of the properties and shall be a President, Vice President, Secretary and Treasurer. The President and Secretary shall be elected from the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2 **Election and Term of Office.** The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

4.3 **Removal and Vacancies.** The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 **Powers and Duties.** The officers of the Association shall each have such power and duties as generally pertain to their respective offices, as well as such power and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a financial committee, management agent, or both.

4.5 **Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the 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.

4.6 **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contract, deeds, leases, checks and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 **Compensation.** Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12.

**Article V**

**Committees**

5.1 **General.** The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such period as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 **Covenants committee.** In addition to any other committees, which the Board may establish pursuant to Section 5.1, the Board may appoint a Covenant Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Governing Documents and resolutions the Board may adopt, the Covenant Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.23 of the By-Laws.

**Article V**

**Miscellaneous**

6.1 **Fiscal Year.** The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 **Parliamentary Rules.** Except as may be modified by Board resolution, Robert's Rule of Order (current addition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, and the By-Laws.

6.3 **Conflicts.** If there are conflicts between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and the By-Laws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6.4 **Books and Records.**

- (a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Members, the Board, and membership register, books of account, and the minutes of meetings of the Members, the Board and committees. The Board shall provide for such inspections to take place at the office of the Association or at such other place within the Properties as the Board shall designate.
- (b) **Rules for Inspection.** The Board shall establish reasonable rules with respect to:
  - (i) notice to be given to the custodian of records;
  - (ii) hours and days of the week when such an inspection may be made, and
  - (iii) payment of the cost of reproducing copies of documents requested.



- (c) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5 **Notices.** Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been dully given if delivered personally or if sent by United States mail, first class postage prepaid:

- (a) if to a member, at the address the Member has designated in writing and filed with the Secretary, or, if no such address has been designated, at the address of the dwelling of such Member; or
- (b) if to the Association, the Board of Directors, or the managing agent, at the principle office of the Association or the managing agent, or at such other address shall be designated by notice in writing to the Members pursuant to the Section.

6.6 **Amendment.**

- (a) **By Members Generally.** Except as provided above, these By-Laws may be amended during the first 20 years (20) year period only by the affirmative vote or written consent, or any combination thereof, of fifty-one percent (51%) of the total votes in the Association, In addition, the approval requirements set forth in the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.
- (b) **Validity and Effective Date of Amendments.** Amendments to these By-Laws shall become effective upon enactment, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its enactment or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.
- (c) If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such member has the authority so to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.
- (d) **FHA/VA Approval.** If Declarant determines to qualify this Property for Federal Housing Administration or Veterans Administration approval the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional property dedication of Common Areas, and a amendment of this Declaration of Covenants, Conditions and Restrictions.

**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting President of SUMMERWIND PLANTATION HOMEOWNERS Association, Inc., a North Carolina non-profit corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors, thereof held on the 5 day of October, 2012.

IN WITNESS WHEREOF, I have hereunto subscribed my name on behalf of the Association this 5 Day of October, 2012

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President

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