



**NORTH CAROLINA REAL ESTATE COMMISSION**

**Residential Property And Owners' Association Disclosure Statement**

**Protecting the Public Interest in Real Estate Brokerage Transactions**

Property Address/Description: 152 Cecina Ct, Clayton, NC 27527

Owner's Name(s): Allister Horton Jr., Jessica Horton

North Carolina law [N.C.G.S. 47E](#) requires residential property owners to complete this Disclosure Statement and provide it to the buyer prior to any offer to purchase. There are limited exemptions for completing the form, such as new home construction that has never been occupied. Owners are advised to seek legal advice if they believe they are entitled to one of the limited exemptions contained in N.C.G.S. 47E-2.

An owner is required to provide a response to every question by selecting Yes (Y), No (N), No Representation (NR), or Not Applicable (NA). An owner is not required to disclose any of the material facts that have a NR option, even if they have knowledge of them. However, failure to disclose latent (hidden) defects may result in civil liability. The disclosures made in this Disclosure Statement are those of the owner(s), not the owner's broker.

- If an owner selects Y or N, the owner is only obligated to disclose information about which they have actual knowledge. If an owner selects Y in response to any question about a problem, the owner must provide a written explanation or attach a report from an attorney, engineer, contractor, pest control operator, or other expert or public agency describing it.
- If an owner selects N, the owner has no actual knowledge of the topic of the question, including any problem. If the owner selects N and the owner knows there is a problem or that the owner's answer is not correct, the owner may be liable for making an intentional misstatement.
- If an owner selects NR, it could mean that the owner (1) has knowledge of an issue and chooses not to disclose it; or (2) simply does not know.
- If an owner selects NA, it means the property does not contain a particular item or feature.

For purposes of completing this Disclosure Statement: **"Dwelling"** means any structure intended for human habitation, **"Property"** means any structure intended for human habitation and the tract of land, and **"Not Applicable"** means the item does not apply to the property or exist on the property.

**OWNERS:** The owner must give a completed and signed Disclosure Statement to the buyer no later than the time the buyer makes an offer to purchase property. If the owner does not, the buyer can, under certain conditions, cancel any resulting contract. An owner is responsible for completing and delivering the Disclosure Statement to the buyer even if the owner is represented in the sale of the property by a licensed real estate broker and the broker must disclose any material facts about the property that the broker knows or reasonably should know, regardless of the owner's response.

The owner should keep a copy signed by the buyer for their records. If something happens to make the Disclosure Statement incorrect or inaccurate (for example, the roof begins to leak), the owner must promptly give the buyer an updated Disclosure Statement or correct the problem. Note that some issues, even if repaired, such as structural issues and fire damage, remain material facts and must be disclosed by a broker even after repairs are made.

**BUYERS:** The owner's responses contained in this Disclosure Statement are not a warranty and should not be a substitute for conducting a careful and independent evaluation of the property. **Buyers are strongly encouraged to:**

- Carefully review the entire Disclosure Statement.
- Obtain their own inspections from a licensed home inspector and/or other professional.

DO NOT assume that an answer of N or NR is a guarantee of no defect. If an owner selects N, that means the owner has no actual knowledge of any defects. It does not mean that a defect does not exist. If an owner selects NR, it could mean the owner (1) has knowledge of an issue and chooses not to disclose it, or (2) simply does not know.

**BROKERS:** A licensed real estate broker shall furnish their seller-client with a Disclosure Statement for the seller to complete in connection with the transaction. A broker shall obtain a completed copy of the Disclosure Statement and provide it to their buyer-client to review and sign. All brokers shall (1) review the completed Disclosure Statement to ensure the seller responded to all questions, (2) take reasonable steps to disclose material facts about the property that the broker knows or reasonably should know regardless of the owner's responses or representations, and (3) explain to the buyer that this Disclosure Statement does not replace an inspection and encourage the buyer to protect their interests by having the property fully examined to the buyer's satisfaction.

- **Brokers are NOT permitted to complete this Disclosure Statement on behalf of their seller-clients.**
- Brokers who own the property may select NR in this Disclosure Statement but are obligated to disclose material facts they know or reasonably should know about the property.

Buyer Initials \_\_\_\_\_ Owner Initials AA

Buyer Initials \_\_\_\_\_ Owner Initials JH

**SECTION A.  
STRUCTURE/FLOORS/WALLS/CEILING/WINDOW/ROOF**

	Yes	No	NR
A1. Is the property currently owner-occupied? Date owner acquired the property: _____ If not owner-occupied, how long has it been since the owner occupied the property? _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A2. In what year was the dwelling constructed? _____			<input type="checkbox"/>
A3. Have there been any structural additions or other structural or mechanical changes to the dwelling(s)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
A4. The dwelling's exterior walls are made of what type of material? (Check all that apply) <input type="checkbox"/> Brick Veneer <input type="checkbox"/> Vinyl <input type="checkbox"/> Stone <input type="checkbox"/> Fiber Cement <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Composition/Hardboard  <input type="checkbox"/> Concrete <input type="checkbox"/> Aluminum <input type="checkbox"/> Wood <input type="checkbox"/> Asbestos <input type="checkbox"/> Other: _____			<input type="checkbox"/>
A5. In what year was the dwelling's roof covering installed? _____			<input checked="" type="checkbox"/>
A6. Is there a leakage or other problem with the dwelling's roof or related existing damage?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
A7. Is there water seepage, leakage, dampness, or standing water in the dwelling's basement, crawl space, or slab?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
A8. Is there an infestation present in the dwelling or damage from past infestations of wood destroying insects or organisms that has not been repaired?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

A9. Is there a problem, malfunction, or defect with the dwelling's:				
	NA	Yes	No	NR
Foundation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Slab	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Patio	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Floors	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Windows	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Doors	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ceilings	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Deck	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Attached Garage	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fireplace/Chimney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Interior/Exterior Walls	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Explanations for questions in Section A (identify the specific question for each explanation):*

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**SECTION B.  
HVAC/ELECTRICAL**

	Yes	No	NR
B1. Is there a problem, malfunction, or defect with the dwelling's electrical system (outlets, wiring, panels, switches, fixtures, generator, etc.)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
B2. Is there a problem, malfunction, or defect with the dwelling's heating and/or air conditioning?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
B3. What is the dwelling's heat source? (Check all that apply; indicate the year of each system manufacture)  <input checked="" type="checkbox"/> Furnace [ ____ # of units ] Year: _____ <input type="checkbox"/> Heat Pump [ ____ # of units ] Year: _____ <input type="checkbox"/> Baseboard [ ____ # of bedrooms with units ] Year: _____ <input type="checkbox"/> Other: _____ Year: _____			<input type="checkbox"/>

Buyer Initials \_\_\_\_\_ Owner Initials *AA*  
 Buyer Initials \_\_\_\_\_ Owner Initials *JH*

Yes No NR

B4. What is the dwelling's cooling source? (Check all that apply; indicate the year of each system manufacture)

Central Forced Air: \_\_\_\_\_ Year: \_\_\_\_\_  Wall/Windows Unit(s): \_\_\_\_\_ Year: \_\_\_\_\_  
 Other: \_\_\_\_\_ Year: \_\_\_\_\_

B5. What is the dwelling's fuel source? (Check all that apply)

Electricity  Natural Gas  Solar  Propane  Oil  Other: \_\_\_\_\_

*Explanations for questions in Section B (identify the specific question for each explanation):*

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**SECTION C.  
PLUMBING/WATER SUPPLY/SEWER/SEPTIC**

Yes No NR

C1. What is the dwelling's water supply source? (Check all that apply)

City/County  Shared well  Community System  Private well  Other: \_\_\_\_\_

If the dwelling's water supply source is supplied by a private well, identify whether the private well has been tested for: (Check all that apply).

Quality  Pressure  Quantity

If the dwelling's water source is supplied by a private well, what was the date of the last water quality/quantity test? \_\_\_\_\_

C2. The dwelling's water pipes are made of what type of material? (Check all that apply)

Copper  Galvanized  Plastic  Polybutylene  Other: \_\_\_\_\_

C3. What is the dwelling's water heater fuel source? (Check all that apply; indicate the year of each system manufacture)  Gas: \_\_\_\_\_  Electric: \_\_\_\_\_  Solar: \_\_\_\_\_  Other: \_\_\_\_\_

C4. What is the dwelling's sewage disposal system? (Check all that apply)

Septic tank with pump  Community system  Septic tank  Drip system

Connected to City/County System  City/County system available  Other: \_\_\_\_\_

Straight pipe (wastewater does not go into a septic or other sewer system) \*Note: Use of this type of system violates State Law.

If the dwelling is serviced by a septic system, how many bedrooms are allowed by the septic system permit? \_\_\_\_\_  No Records Available

Date the septic system was last pumped: \_\_\_\_\_

C5. Is there a problem, malfunction, or defect with the dwelling's:

	NA	Yes	No	NR		NA	Yes	No	NR
Septic system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Plumbing system (pipes, fixtures, water heater, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sewer system	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Water supply (water quality, quantity, or pressure)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

*Explanations for questions in Section C (identify the specific question for each explanation):*

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Buyer Initials \_\_\_\_\_ Owner Initials AA  
 Buyer Initials \_\_\_\_\_ Owner Initials JH

### SECTION D. FIXTURES/APPLIANCES

	Yes	No	NR
D1. Is the dwelling equipped with an elevator system? If yes, when was it last inspected? _____ Date of last maintenance service: _____	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

D2. Is there a problem, malfunction, or defect with the dwelling's:

	NA	Yes	No	NR		NA	Yes	No	NR		NA	Yes	No	NR					
Attic fan, exhaust fan, ceiling fan	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Irrigation system	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Sump pump	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Garage door system	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Elevator system or component	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Pool/hot tub /spa	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Gas logs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Security system	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Appliances to be conveyed	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	TV cable wiring or satellite dish	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Central vacuum	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Other: _____	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*Explanations for questions in Section D (identify the specific question for each explanation):*

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### SECTION E. LAND/ZONING

	Yes	No	NR
E1. Is there a problem, malfunction, or defect with the drainage, grading, or soil stability of the property?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
E2. Is the property in violation of any local zoning ordinances, restrictive covenants, or local land-use restrictions (including setback requirements?)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
E3. Is the property in violation of any building codes (including the failure to obtain required permits for room additions or other changes/improvements)?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
E4. Is the property subject to any utility or other easements, shared driveways, party walls, encroachments from or on adjacent property, or other land use restrictions?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
E5. Does the property abut or adjoin any private road(s) or street(s)?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
E6. If there is a private road or street adjoining the property, are there any owners' association or maintenance agreements dealing with the maintenance of the road or street? <input type="radio"/> NA	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

*Explanations for questions in Section E (identify the specific question for each explanation):*

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### SECTION F. ENVIRONMENTAL/FLOODING

	Yes	No	NR
F1. Is there hazardous or toxic substance, material, or product (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) that exceed government safety standards located on or which otherwise affect the property?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Buyer Initials \_\_\_\_\_ Owner Initials AA  
 Buyer Initials \_\_\_\_\_ Owner Initials JH

	Yes	No	NR
F2. Is there an environmental monitoring or mitigation device or system located on the property?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F3. Is there debris (whether buried or covered), an underground storage tank, or an environmentally hazardous condition (such as contaminated soil or water or other environmental contamination) located on or which otherwise affect the property?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F4. Is there any noise, odor, smoke, etc., from commercial, industrial, or military sources that affects the property?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F5. Is the property located in a federal or other designated flood hazard zone?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F6. Has the property experienced damage due to flooding, water seepage, or pooled water attributable to a natural event such as heavy rainfall, coastal storm surge, tidal inundation, or river overflow?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F7. Have you ever filed a claim for flood damage to the property with any insurance provider, including the National Flood Insurance Program?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F8. Is there a current flood insurance policy covering the property?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F9. Have you received assistance from FEMA, U.S. Small Business Administration, or any other federal disaster flood assistance for flood damage to the property?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F10. Is there a flood or FEMA elevation certificate for the property?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

**NOTE:** An existing flood insurance policy may be assignable to a buyer at a lesser premium than a new policy. For properties that have received disaster assistance, the requirement to obtain flood insurance passes down to all future owners. Failure to obtain flood insurance can result in an owner being ineligible for future assistance.

**Explanations for questions in Section F (identify the specific question for each explanation):**

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### SECTION G. MISCELLANEOUS

	Yes	No	NR
G1. Is the property subject to any lawsuits, foreclosures, bankruptcy, judgments, tax liens, proposed assessments, mechanics' liens, materialmens' liens, or notices from any governmental agency that could affect title to the property?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
G2. Is the property subject to a lease or rental agreement?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
G3. Is the property subject to covenants, conditions, or restrictions or to governing documents separate from an owners' association that impose various mandatory covenants, conditions, and or restrictions upon the lot or unit?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

**Explanations for question in Section G (identify the specific question for each explanation):**

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Buyer Initials \_\_\_\_\_ Owner Initials AA  
 Buyer Initials \_\_\_\_\_ Owner Initials JH

### SECTION H. OWNERS' ASSOCIATION DISCLOSURE

If you answer 'Yes' to question H1, you must complete the remaining questions in Section H. If you answered 'No' or 'No Representation' to question H1, you do not need to answer the remaining questions in Section H.

Yes No NR

H1. Is the property subject to regulation by one or more owners' association(s) including, but not limited to, obligations to pay regular assessments or dues and special assessments?

If "yes," please provide the information requested below as to each owners' association to which the property is subject [insert N/A into any blank that does not apply]:

a. (specify name) tuscany hoa whose regular assessments ("dues") are \$ 60 per month.

The name, address, telephone number, and website of the president of the owners' association or the association manager are: \_\_\_\_\_

b. (specify name) \_\_\_\_\_ whose regular assessments ("dues") are \$ \_\_\_\_\_ per \_\_\_\_\_.

The name, address, telephone number, and website of the president of the owners' association or the association manager are: \_\_\_\_\_

c. Are there any changes to dues, fees, or special assessment which have been duly approved and to which the lot is subject?

If "yes," state the nature and amount of the dues, fees, or special assessments to which the property is subject: \_\_\_\_\_

H2. Is there any fee charged by the association or by the association's management company in connection with the conveyance or transfer of the lot or property to a new owner?

If "yes," state the amount of the fees: \_\_\_\_\_

H3. Is there any unsatisfied judgment against, pending lawsuit, or existing or alleged violation of the association's governing documents involving the property?

If "yes," state the nature of each pending lawsuit, unsatisfied judgment, or existing or alleged violation: \_\_\_\_\_

H4. Is there any unsatisfied judgment or pending lawsuits against the association?

If "yes," state the nature of each unsatisfied judgment or pending lawsuit: \_\_\_\_\_

**Explanations for questions in Section H (identify the specific question for each explanation):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Owner(s) acknowledge(s) having reviewed this Disclosure Statement before signing and that all information is true and correct to the best of their knowledge as of the date signed.**

Owner Signature: Allister Horton Date 01/07/2025

Owner Signature: Jessica Horton Date 01/07/2025

**Buyers(s) acknowledge(s) receipt of a copy of this Disclosure Statement and that they have reviewed it before signing.**

Buyer Signature: \_\_\_\_\_ Date \_\_\_\_\_

Buyer Signature: \_\_\_\_\_ Date \_\_\_\_\_

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TUSCANY SUBDIVISION**

Prepared By and Return To: Alison R. Cayton of Manning, Fulton & Skinner, P.A., Post Office Box 20389,  
Raleigh, NC 27619-0389

This Declaration is made as of October 29, 2009, by **42 EAST, LLC**, a North Carolina limited liability company, hereinafter referred to as "the Declarant." The Declarant states and declares as follows:

A. The Declarant is the owner of those tracts of land located in Johnston County, North Carolina, and described in **Exhibit A** attached hereto and incorporated herein ("the Property").

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

C. The Declarant desires to impose certain restrictive and protective covenants upon the Property to protect and to promote the beneficial ownership, use and enjoyment of all residential lots and units located within the Community.

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

**Article I. Application of the North Carolina Planned Community Act.**

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

**Article II. Definitions.**

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

“Annexation Declaration” shall mean an instrument recorded at the Johnston County Registry that subjects additional land to this Declaration.

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

“Articles of Incorporation” shall mean the Articles of Incorporations for Tuscany Subdivision Homeowners Association, a North Carolina nonprofit corporation.

“Association” shall mean Tuscany Subdivision Homeowners Association, a North Carolina nonprofit corporation, its successors and assigns.

“Base Assessment” shall mean the assessment levied on all Lots subject to assessment under Article IX below to fund common expenses, as determined in accordance with Article IX below.

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

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

“Common Area” shall mean all property, and any improvements thereon, wherever located, owned or leased by the Association or subjected to an easement or license in favor of the Association for the common use and enjoyment of Members. Common Area shall include all water and sewer lines serving more than one Lot and located outside any public rights-of-way or utility easements. Common Area shall include any drainage easements, stormwater pipes, detention and retention facilities serving more than one Lot and not accepted by any governmental authority for maintenance.

“Community-Wide Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community, or the minimum standards established pursuant to the Architectural Guidelines, Rule and Regulations, and Board resolutions, whichever is the higher standard. Declarant shall initially establish such standard, which may involve both objective and subjective elements. The Community-Wide Standard shall evolve as the Community evolves.

“Declarant” shall mean 42 East, LLC, a North Carolina limited liability company, or any successor or assign designated as Declarant in a Recorded Document executed by the immediately preceding Declarant.

“Declarant Control Period” shall mean the period of time during which Declarant holds a fee interest or contractual right in any portion, however small, of the land described in **Exhibit A** and/or any land annexed pursuant to Section 10.1 herein.

“Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions for Tuscany Subdivision, and any amendments hereto or restatements hereof.



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

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

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

“Master Plan” shall mean the master land-use plan for the development of the Community approved by Johnston County.

“Member” shall mean and refer to every person or entity entitled to membership in the Association as provided in Article III below.

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

“Neighborhood” shall mean any area or areas within the Community designated by a Supplemental Declaration to be a distinct or separate residential area within the Community, the residents of which will share or have in common expenses, interests, concerns, responsibilities, needs or uses not shared by or common to all residents within the Community.

“Neighborhood Assessments” shall mean assessments levied in accordance with Section 9.4 below.

“Neighborhood Expenses” shall mean the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, which may include reasonable reserves for capital repairs and replacements and reasonable administrative charges, as may be authorized pursuant to this Declaration or in the Supplementary Declaration(s) applicable to such Neighborhood(s).

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

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

“Special Assessments” shall mean assessments levied in accordance with Section 9.2 below.

“Specific Assessments” shall mean assessments levied in accordance with Section 9.3 below.

“Supplemental Declaration” shall mean any declaration of covenants, conditions and/or restrictions that Declarant may file at the Johnston County Registry subsequently to filing this Declaration, which shall apply only to a particular area or areas within the Community. Such Supplemental Declaration may supplement, change, amend or supersede the terms and provisions of this

Declaration as necessary to accommodate differences between the plan of the development for the subject property and the plan of the development for the rest of the Community. Such Supplemental Declaration may include a declaration of condominium creating a condominium within the Community pursuant to the Condominium Act.

### **Article III. Tuscany Homeowners Association**

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

3.1. Purposes. The purposes of the Association shall be:

- a. To maintain and preserve all Common Areas, and all roads, streets, decorative and protective structures (including but not limited to entry monuments and buffer walls), ponds, lakes, utilities, landscaped areas and other improvements located thereon, if any;
- b. To enforce the provisions of the Governing Documents;
- c. To perform all duties and functions allotted to owner's associations pursuant to Article 3 of the Planned Community Act;
- d. To promote and to protect the enjoyment and beneficial use and ownership of the Lots;  
and
- e. To promulgate and enforce the Rules and Regulations and administrative rules and regulations for use of the Common Area.

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

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

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

Class B. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters or issues before or considered by the Association. The Class B Member shall be entitled to one (1) vote for each Lot it owns, plus three (3) votes for each Lot owned by a Person other than the Declarant. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (i) the date that all the Lots in the Community have been conveyed by the

Declarant to other Owners; (ii) the surrender by the Declarant of the right to appoint or remove any officer of the Association or member of the Board by a Recorded Document executed by the Declarant; or (iii) the expiration of Declarant's rights to appoint or remove any officer of the Association or member of the Board pursuant to Article XI below.

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

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

#### **Article IV. Use and Occupancy of Lots and Common Areas.**

##### 4.1. Fundamental Restriction on Use.

The Lots and Common Area shall be used for residential and related purposes only, subject to and consistent with the Governing Documents, including the Rules and Regulations; provided that Declarant and/or the Association may maintain a business or management office within the Community, and provided that Declarant and/or any brokers or builders approved by Declarant may maintain information centers, model homes and sales offices within the Community. Notwithstanding the above, home business use ancillary to the primary residential use of a Lot is permitted, subject to the Rules and Regulations and all applicable laws and ordinances of governmental authorities.

##### 4.2. Fundamental Restriction on Occupancy.

All occupants of a single Lot shall be members of a single housekeeping Lot. For purposes of this Declaration, a single housekeeping Lot is defined as a single family and not more than two (2) unrelated persons. The number of occupants on each Lot shall also be reasonably limited by the Lot's size and facilities and by a policy against disproportionate use of the Common Areas.

##### 4.3. Additional Restrictions on Use and Occupancy of Lots.

Use and occupancy of all Lots shall be restricted as follows:

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

4.3.2 Use of Property. No portion of the Property (except for a temporary office of the Declarant and building models used by Declarant) shall be used except for residential purposes and for purposes incidental or accessory thereto.

No trade or business of any kind shall be conducted upon any Lot or part thereof, except (a) Declarant or its agents may use any unsold Lots for sales or display purposes, (b) Declarant may maintain

a sales or rental office on the Property, and (c) as may be approved by the Board of Directors in its sole discretion, on a case-by-case basis after petition by an Owner. Provided however, that any such approved business must be conducted entirely within the confines of the house or garage of an Owner and must not create, among other things, a nuisance to the neighbors, or create among other things, excessive noise, traffic, odors or unpleasant appearances. Once permission is granted by the Board of Directors for such a business, the Board of Directors automatically retains the right to terminate approval of such business for violation of the above conditions or any other conditions stated in the Board's initial approval and the Owner shall terminate such business within thirty (30) days after receipt of notice from the Board.

4.3.3. Restrictions on Rentals. Leasing of dwellings for any of the following purposes is hereby prohibited:

- (a) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and had no future intent to do so;
- (b) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and who enters into a lease with a tenant that gives the tenant the option to purchase the Dwelling during, or at the end of the term of the lease;
- (c) by an Owner where the primary purpose of the ownership of the Dwelling is for commercial purposes in that the Dwelling is intended primarily for lease to tenants and not for occupancy by the Owner as the Owner's primary residence

Notwithstanding the foregoing, the Declarant, or Affiliate may lease any Dwelling owned by Declarant for a period not to exceed one (1) year in connection with the sale of a Lot.

4.3.4. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

4.3.5. Animals. No animals, birds, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats, pet birds or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners. No pet shall be allowed to make an unreasonable amount of noise. Pets shall be under leash at all times when walked or exercised in any portion of the Common Elements, and the owner of such pet shall clean up after such pet. Upon the written request of any Owner, the Board may conclusively determine, in its sole and absolute discretion, whether for purposes of this Section 4, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the owner of a particular pet to remove such pet from the Property if such pet is found to be a nuisance or to be in violation of these restrictions. The Board of Directors shall have the further right to fine any Owner for the violation of these pet restrictions by such Owner, and the Owner shall be liable to the Association for the cost of repair of any damage to the Common Elements caused by the Owner's pet. Any such fine or cost of repair shall be added to and become a part of that portion of any Assessment next coming due to which such Dwelling and its Owner are subject.

4.3.6. Insurance. Nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance applicable to residential use for the Property or any Lots. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, on his Lot or on the Common Elements which will result in the cancellation of insurance on any portion of the Property, or Lots therein, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Elements.

4.3.7. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof. All laws, orders, rules, regulations, ordinances, or requirements of any governmental agency having jurisdiction thereof, relating to any Lot or any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain such portion of the Property.

4.3.8. Structural Integrity. Nothing shall be done in, to, or upon any of the Common Elements which will impair the structural integrity of any building, or other improvement or portion of the Common Elements or which would impair or alter the exterior of any building, improvement or portion thereof, except in the manner provided in this Declaration.

4.3.9. Signs. No Lot Owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Lot, or any portion of the Common Elements, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority; provided, however, that the Declarant and any Lot Owner, or their respective agents, may place "For Sale" or "For Rent" signs on any Lots for sale or rent and in suitable places on the Common Elements approved by the Association; provided, however, that during the development of the Property and the initial marketing of Lots, the Declarant may maintain a sales office and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws. Such permitted signs shall be placed in the approximate center of a Lot and six feet from the road curb. No sign shall be nailed to trees. The display of political signs is permitted; provided, however, there shall be no display of political signs earlier than 45 days before the day of the election nor later than seven days after an election. Further no political sign may be larger than 24 inches by 24 inches in accordance with N.C.G.S. 47C-3-121. For purposes of this section a political sign means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on an election ballot. Further, no pole or other device for the display of decorative flags shall be erected or displayed on or about any Lot or in the Common Elements unless approved in advance by the Association. To the extent permitted by law, no signs or flags shall be placed on any building or improvement unless otherwise approved by the Association. In the event that the Association approves installation of a pole or device for the display of decorative flags, any such flags displayed by an Owner shall be in good taste and shall not contain lewd or offensive displays or material. The display of the flag of United States or North Carolina is permitted as long as its size is no greater than 4 feet by 6 feet and it is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. § 5-10, as amended. No flag (North Carolina or United States included) of a size greater than 4 feet by 6 feet shall be displayed or erected on or about any Lot or Common Element.

4.3.10. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

4.3.11. Common Elements Use. The Common Elements shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Property, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

4.3.12. Parking. No boats, trailers, campers, motor homes, trucks, commercial vehicles or tractors shall be parked on any Lot, on the Common Elements, or on any right of way of any roads or streets within the Property or adjoining the Property by any Lot Owner, its family members, tenants or

contract purchasers, except inside an enclosed garage located on a Lot or in a specified storage area established by the Association or except as otherwise may be permitted by Rules and Regulations of the Association. Delivery and maintenance vehicles, which are not owned by a Lot Owner are permitted. Notwithstanding the foregoing, this prohibition shall not apply to contractor's trucks and vehicles during the construction of any dwelling, garage or accessory building, it being clearly understood that contractor's trucks and vehicles shall be permitted to park on the roads and streets within the Property until completion of any dwelling, garage or accessory building, for so long as construction is being diligently pursued by the contractor.

4.3.13. Mobile Homes, etc. No mobile home or modular home shall be placed upon any Lot at any time, nor any trailer, recreational vehicle, tent, or other structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters or storage units on the Common Elements used by the contractor during the construction of a dwelling, garage or accessory building, for so long as construction is being diligently pursued by the contractor and it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction.

4.3.14. Delivery Receptacle. No mail box, paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected or located on any Lot unless and until the size, location, design and type of material for the receptacle shall have been approved by the Board or the Architectural Committee of a Sub-Association.

4.3.15. Antennae. Exterior radio and television antennae, aerials, disks and dishes for reception of commercial broadcasts shall not be permitted on any Lot and no other aerials, disks and dishes (for example, without limitation, amateur short wave or ship to shore) shall be permitted on any Lot without permission of the Board as to design, appearance and location or pursuant to Regulations issued for that purpose and except as otherwise mandated by applicable law.

4.3.16. Firearms; Hunting Prohibited. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type, or method of propulsion; and no hunting of any type shall be carried on or conducted on the Property.

4.3.17. Drying Areas. Clotheslines or drying yards shall not be located upon any Lot without the prior written consent of the Board, which consent may be conditioned or withheld in the sole discretion of the Board, or as set forth in Regulations established for that purpose.

4.3.18. Unsightly Growth. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain on any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain thereon, including vacant parcels.

4.3.19. Fuel Tanks. Above-ground and below-ground fuel tanks are prohibited on any portion of the Property.

4.3.20. Independent Covenants. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

4.3.21. Additional Restrictions. Declarant may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not diminish the covenants and restrictions set forth herein.

4.3.22. Subdividing. No Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period of Class B Membership and thereafter by the Board. However, the Declarant, hereby expressly reserves unto itself, and to any successor to which Declarant makes a specific assignment of this right, the right to replat any two (2) or more Lots and/or Common Elements (so long as replatting of the Common Elements conforms with applicable governmental regulations and upon approval by the appropriate governmental authority) shown on the plat of any subdivision of the Property in order to create one or more modified Lots; to recombine one or more Lots and/or Common Elements to create a larger Lot; to eliminate from this Declaration Lots that are not otherwise buildable or Lots and/or Common Elements that are needed for access to any area of the Property or are needed for use as private roads or access areas, and to take such steps as are reasonably necessary to make such replatted Lots suitable and fit as a building site or access area or roadway, said steps to include, but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted Lots. Any of the Common Elements is recombined with a Lot, the Association shall execute all necessary documents to effect the recombination.

4.3.23. Refuse Storage. All trash, garbage and refuse stored outside of a dwelling shall be stored in a solidly screened, enclosed, covered receptacle out of view from any street or any other Lot.

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

4.3.25. Temporary Structures. No temporary structures such as sheds shall be erected or placed on a Lot without the written approval of the Declarant or the Association. Such structures, if permitted, may be used only during periods of construction, and never as a residence.

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

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

4.3.28. Fences. Fences shall only be permitted if approved pursuant to Article V herein.

#### 4.4 Common Area Administrative Rules.

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

#### 4.5 Notice to Purchasers and Mortgagees.

All prospective purchasers and mortgagees are given notice that use of the Lots and the Common Area is restricted and governed by the Rules and Regulations, as they may be amended, expanded, and otherwise modified hereunder. Each Purchaser, by acceptance of a deed, acknowledges and agrees that the use, enjoyment and marketability of his or her Lot shall be affected by the Rules and Regulations which may change from time to time, and that the current Rules and Regulations may not be

set forth in a Recorded Document. **Take notice that the Declarant or the Association may have changed the initial Rules and Regulations since the recording of this Declaration.** The Association shall provide a copy of the current Rules and Regulations to any prospective purchaser Member or Mortgagee upon written request and payment of the reasonable cost of such copy.

## **Article V. Architecture and Landscaping**

### **5.1. General.**

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

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

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

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

### **5.2. Architectural Review.**

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

In reviewing and acting upon any request for approval, Declarant or its designee shall act solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue or as long as Declarant owns any portion of the real property described in **Exhibit A** or **B** or has the right to expand The Community pursuant to Section 10.1, unless earlier terminated by Declarant by a Recorded Document.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.



Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to any other Person or committee. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (a) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (b) Declarant's right to veto any decision which Declarant determines, in its sole and exclusive discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of any other Person or committee shall be limited to such matters as are specifically delegated to it by Declarant.

5.2.2. Architectural Review Committee. Upon delegation by Declarant or upon expiration of the Declarant Control Period, the Association, acting through an architectural review committee ("ARC") appointed by the Board, shall assume jurisdiction over architectural matters. The ARC shall consist of at least three, but not more than seven, Persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be representatives of Members, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, the Board shall establish from time to time.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Association or expiration of the Declarant Control Period, the Association shall have no jurisdiction over architectural matters.

5.3 Reviewer. For purposes of this Article, the committee or entity having jurisdiction over architectural matters in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

5.4 Guidelines and Procedures.

5.4.1 Architectural Guidelines. Declarant may prepare Architectural Guidelines applicable to Lots which may contain general provisions applicable to all Lots as well as specific provisions which vary among the Lots according to location, Neighborhood, use, or other factors. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer in considering applications hereunder. The Architectural Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Architectural Guidelines does not guarantee approval of any application. Further, the Architectural Guidelines may be more restrictive than guidelines followed by Johnston County or as set forth in the International Builder's Code.

Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it owns any portion of the real property described in **Exhibit A** or **B** or has a right to expand the Community pursuant to Section 11.1, notwithstanding a delegation of reviewing authority, unless Declarant also delegates the power to amend the Architectural Guidelines. Upon termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Architectural Guidelines with the Board's consent. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation

on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Association shall maintain a copy of the Architectural Guidelines, as they may exist from time to time, and shall make them available to Members or Owners for inspection and copying upon reasonable notice during the Association's business hours. In Declarant's discretion, such Architectural Guidelines may be recorded at the Johnston County Registry, in which event the recorded version, as it may be amended, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

5.4.2 Procedures. Except as the Architectural Guidelines otherwise specifically provide, no activity described in Section 5.1 shall commence on any Lot until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and the Reviewer may require the submission of such additional information as deemed 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 solely on aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability or attractiveness of particular improvements. Subject to Declarant's veto power described below, the Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment. Such determinations shall not be subject to review so long as they are made in good faith and in accordance with the procedures described in this Article.

The Reviewer shall make a determination on each application within thirty (30) days after receipt of a completed application and all required information. The Reviewer may (a) approve the application, with or without conditions; (b) approve a portion of the application and disapprove other portions; (c) disapprove the application; or (d) request further or additional information. The Reviewer may, but shall not be obligated to, specify the reasons for any objections or offer suggestions for curing any objections.

Until expiration of Declarant's rights under this Article, the ARC shall notify Declarant in writing within three business days after the ARC has approved an application. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have Ten (10) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

In any event, the Reviewer shall notify the applicant in writing of a final determination within forty-five (45) days after its receipt of a completed application and all required information. In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Architectural Guidelines unless the Reviewer has granted a variance pursuant to Section 5.5.

Notice shall be deemed to have been 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 to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing construction of any proposed improvements. 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 unless the Reviewer grants an extension in writing, which it shall not be 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 Member.

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.

5.5 No Waiver of Future Approvals.

Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the 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 binding precedent in any other matter or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.6 Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (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.

5.7 Limitation of Liability.

The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other governmental requirements, (c) that Lots are of comparable quality, value, size, or of similar

design, aesthetically pleasing, or otherwise acceptable to neighboring property owners, (d) that views from any other Lots or the Common Area are protected, or (e) that no defects exist in approved construction.

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

5.8 Certificate of Compliance.

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

5.9 View Impairment.

Neither Declarant nor the Association guarantee or represent that any view over and across any portion of the Community or any adjacent property will be preserved without impairment. Any additions or changes, whether occurring in the course of developing or maintaining the Community, may diminish or obstruct any view from Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

**Article VI. Maintenance and Repair**

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

6.2 Association Responsibility. The Association shall maintain the following:

- a. All landscaped rights-of-way and all entry features;
- b. All streets and roadways within any easement or licenses owned or held by the Association, unless such streets or roadways are maintained by some governing authority.
- c. All Common Areas, and all landscaping, paving, streets, structures and improvements of any nature located thereon;

d. All ponds, streams and culverts located on the Property which serve as part of any drainage and storm-water retention system; and

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

- a. Keeping the area free and clear of all litter, trash, refuse and wastes;
- b. Mowing lawns on a regular basis;
- c. Pruning trees and shrubs;
- d. Watering lawns;
- e. Keeping exterior lighting and mechanical facilities in working order;
- f. Keeping lawn and garden areas alive;
- g. Removing and replacing any dead plant material;
- h. Keeping vacant land well maintained and free of trash and weeds;
- i. Keeping parking areas and driveways in good repair;
- j. Complying with all governmental health and police requirements;
- k. Repainting of all structures; and
- l. Repair of exterior damage to all structures.

6.4 Association's Right to Perform Owner's Responsibility. If any Owner or occupant of a Lot fails to perform any of the duties or responsibilities set forth in this subsection, then the Association or Declarant may give such person written notice of such failure and such person must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in any official depository of the United States mail, addresses to the party to whom it is intended to be delivered at that party's current address as shown by the records of the Association, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner. Should any such person fail to fulfill this duty and responsibility within such period, then the Declarant or the Association, acting through its authorized agent or agents, shall have the right and power to enter onto the Lot in question and perform such care and maintenance without ant liability for damages for wrongful entry, trespass or otherwise at any person. All Owner(s) of a Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Association or the Declarant in performing such work computed at the rate of twelve percent (12.00%) per annum form the date(s) such amounts are expended until repaid to the Association or the Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and shall reimburse the Association or the Declarant, as the case may be, on demand for such costs and expense (including

interest as above provided). If such Owner shall fail to reimburse the Association or the Declarant, as the case may be, within thirty (30) days after mailing to such Owner of a statement for such costs and expense by the Association or Declarant, the Association has performed the work on the Lot of the delinquent Owner(s), the Association may charge a Specific Assessment for such amounts against the Lot of such Owner(s), and proceed to collect such Specific Assessment as provided in Article IX below.

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

## **Article VII. Insurance.**

7.1. The Association shall obtain and continue in effect the following types of insurance, if reasonable available, or if not reasonable available, the most nearly equivalent coverages as are reasonably available.

a. Blanket property insurance for all insurable improvements on the Common Area to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies the Association obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes. The Association shall be deemed trustee of all Members' interests in all insurance proceeds paid to the Association under any such policies and shall have full power to receive and to deal with such proceeds. The insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, except as otherwise provided in this Section.

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

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

d. Directors' and officers' liability coverage.

e. Commercial crime insurance, including fidelity insurance covering all persons 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. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

f. Such additional insurance as the Board, in its business judgment determines advisable.

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

policies at least once a year and shall adjust the policy limits as the Board deems necessary or appropriate.

7.3 The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified persons, at least one of whom must be familiar with replacement costs in the Johnston County area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

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

7.5 All insurance coverage obtained by the Board shall:

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

b. be written in the name of the Association as trustee for the benefited parties. (policies on the Common Areas shall be for the benefit of the Association and its Members);

c. not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

d. contain an inflation guard endorsement;

e. include an agreed amount endorsement, if the policy contains a coinsurance clause;

f. provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association or interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving any Owner any interest in the Common Area other than that of a Member);

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

h. include an endorsement precluding the insurer from denying a claim by an Owner or conditioning recovery under the policy based upon or due to the negligent acts or omissions of the Association or any other Owner.

7.6 In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds for claims arising in connection with the ownership, existence, use or management of the Common Area and provide:

- a. a waiver of subrogation as to any claims against the Association's board of directors, officers, employees and its manager, or the Owners and their tenants, servants, agents and guests;
- b. a waiver of the insurer's rights to repair and reconstruct instead of paying cash; and
- c. an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification or non-renewal

### **Article VIII. Repair and Reconstruction of Association Property.**

The Association shall have the authority and the duty to repair or reconstruct Common Area or other property which the Association is obligated to insure ("Insured Property") that is damaged or destroyed unless such repair or reconstruction would be illegal under any state or local ordinance governing health or safety, or Members representing at least eighty percent (80%) percent of the total vote of the Association vote not to repair or reconstruct.

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

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

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



**Article IX. Association Finances****9.1. Budgeting and Allocating Common Expenses.**

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

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

The Association is hereby authorized to levy Base Assessments equally against all Lots subject to assessment to fund the Common Expenses. In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by paying any deficit between the Common Expenses and Association funds collected pursuant to the current year's budget, or any portion of any such deficit (in addition to any amounts paid by Declarant under Section 9.7), which may be a contribution, an advance against future assessments due from Declarant or a loan, in Declarant's discretion. Any such deficit payment shall be disclosed as a line item in the income portion of the budget. Payment of such deficit, or portion thereof, in any year shall not obligate Declarant to continue payment of such deficit in future years, unless otherwise provided in a written agreement between the Association and Declarant.

**9.2. Special Assessments.**

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

**9.3. Specific Assessments.**

The Board shall have the power to levy Specific Assessments against a particular Lot as follows:

a. to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which the Association may offer (which might include the services listed in Section 6.3); 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, the Board shall give the Lot Owner prior written notice and, if required by this Declaration or the Bylaws, an opportunity for a hearing before levying any Specific Assessment under this subsection 9.3(b).

#### 9.4. Neighborhood Assessments.

The Board may levy assessments against the property in a particular Neighborhood to fund actual and estimated expenses incurred by the Association for the primary benefit of property within such Neighborhood. Neighborhood assessments shall be levied as specifically budgeted from time to time by the Board of Directors for expense items such as maintenance, insurance or special services. In addition, the Board shall levy a Neighborhood Assessment upon the request of the Owners holding two-thirds (2/3) of the total association vote applicable to Lots within a Neighborhood

#### 9.5. Authority to Assess Owners; Time of Payment.

Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Lot on the first day of the month following the later of: (a) the closing on the sale of a Lot to a person or entity other than Declarant or (b) the issuance of a certificate of occupancy for a residential dwelling on such Lot. The first annual Base Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

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

#### 9.6. Liability for Assessments.

Each assessment levied by the Association, together with interest and the costs of collection thereof, including reasonable attorney's fees, shall be the personal obligation of all the Owners of each Lot. The Association shall have the power to take whatever action is necessary, at law or in equity, to enforce this Declaration and to collect the assessment, interest and costs. If the assessment remains unpaid for a period of thirty (30) days after the date of mailing of the notice that it is due, interest shall

accrue on any unpaid portion of the assessment from the date of mailing of the notice at the rate of twelve percent (12.00%) per annum, and the assessment, together with interest thereon and the costs of collection thereof (including reasonable attorney's fees) shall constitute a lien on the delinquent Lot when a claim of lien is filed by the Association against the Lot in the Office of the Clerk of Superior Court of Johnston County. The lien may be foreclosed by the Association as provided in N.C.G.S. § 47F-3-116.

The Board's failure to fix assessment amounts or rates or to deliver or mail 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 on the same basis as during the last 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 may exempt himself 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 on the part of each Owner. 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 of the Board.

The 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 pursuant to First Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure, except as otherwise provided in this Section. The subsequent Owner of the foreclosed Lot shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 9.5, including the subsequent Owner of the foreclosed Lot.

#### 9.7 Budget Deficits During Declarant Control.

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

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

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

c. Declarant may acquire property for, or provide services to, the Association or the Common Area. Declarant shall designate the value of the property or the services provided, and such

amounts, at Declarant's request, shall be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

9.8 Statement of Account.

Upon written request of any Member, Mortgagee, prospective Mortgagee or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot, the amount of the current periodic assessment and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting person personally or by certified mail, first-class postage prepaid, return receipt requested. The Association may require the payment of a reasonable processing fee for issuance of such statement.

Such statement shall bind the Association in favor of persons who rely upon it in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within fourteen (14) days of receipt of the request, all unpaid assessments that became due before the date of making such request shall be subordinate to the lien of a Mortgagee that acquires its interest after requesting such statement.

9.9 Exempt Property.

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

- a. all Common Area;
- b. any property dedicated to and accepted by any governmental authority or public utility; and
- c. any and all property owned by the Declarant.

9.10 Capitalization of Association

Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to Three Hundred Fifty Dollars (\$350.00) per Lot. 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 deposited into the operating account of the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws, including expenses incurred by Declarant in providing infrastructure or other Common Area. This amount may be increased or decreased in the sole and exclusive discretion of the Board; provided, however, that in no event shall this initial contribution equal more than the annual Base Assessment for the year in which the acquisition of title by the first Owner, other than Declarant, occurs.

Upon transfer of legal or equitable title of any Lot, other than property owned by the Association or Declarant, from one Owner to another Owner, a contribution shall be made by or on behalf of the purchaser to the Association for the working capital of the Association in an amount equal to Three Hundred Dollars per Lot. 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. The amount may be increased or

decrease in the sole and exclusive discretion of the Board; provided that the amount shall not exceed the amount of the Base Assessment for the Lot for the then current fiscal year. This amount shall be deposited into the operating account of the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws.

9.11 Cost Sharing with Commercial Development. Declarant anticipates a commercial development in the vicinity of Tuscany which will share Common Elements with Tuscany. Declarant reserves the right to negotiate and enter into a cost sharing agreement with the owner of the commercial development whereby certain expenses of shared common elements (such as, but not limited to, road maintenance, stormwater devices, open space and the like) will be assessed as a Common Expense within Tuscany.

## **Article X. Expansion of the Community**

### 10.1. Expansion by Declarant.

If within twenty (20) years of the date of recordation of this Declaration in the office of the Johnston County Register of Deeds, the Declarant should develop such other lands as Declarant or member of Declarant owns or may hereafter acquire contiguous to the Property, such land may be annexed by the Declarant without the consent of Members; and, in doing so, Declarant may file and record such amendments to this Declaration as are necessary without the consent of the Members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Association. For purposes of determining contiguity of property, the rights-of-way of public or private roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise contiguous property. Declarant may transfer or assign this right to subject property to this Declaration, provided that the transferee or assignee is the developer of or owns at least a portion of the contiguous real property, and provided that the transfer or assignment is evidenced by a Recorded Document.

Declarant shall subject additional property to this Declaration by recording an Annexation Declaration describing the property being subjected. Such Annexation Declaration shall not require the Members' consent but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the recording of such Annexation Declaration unless otherwise provided therein.

### 10.2. Expansion by the Association.

Upon termination of the Declarant Control Period, the Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property, if authorized by the affirmative vote of Members representing Sixty-seven (67%) percent of the total existing votes in the Association.

The Association shall subject such property by recording an Annexation Declaration describing the property being subjected. Any such Annexation Declaration shall be executed by the Association and the owner of the subject property, and shall be certified by the Secretary of the Association to have been authorized by the requisite vote of the Members of the Association.

**Article XI. Declarant Rights.****11.1. Reasonable Rights To Develop.**

Declarant and/or its contractors or transferees may construct improvements to or within the Community including to the Lots. The completion of such construction and the sale or other disposal of the Lots is essential to the establishment and welfare of the Community. Therefore, during the Declarant Control Period, nothing in this Declaration or the other Governing Documents shall be construed to:

- a. prevent Declarant, approved builders, or their contractors or subcontractors from doing whatever is reasonably necessary or advisable in connection with the commencement or completion of the above-described work throughout the Community;
- b. prevent Declarant or its representatives from erecting, constructing, and maintaining anywhere in the Community such structures as reasonably may be necessary for the conduct of its business of completing the work, establishing Tuscan as a residential Community and disposing of the Lots by sale, lease, or otherwise;
- c. prevent Declarant from maintaining such signs and conducting such activities in any part of the Community owned by Declarant or the Association as Declarant may deem to be reasonably necessary for the sale, lease, or disposition of Lots; or
- d. prevent Declarant from placing and utilizing on Lots or other property which it owns one or more mobile trailers or temporary structures as sales offices or for construction activities.

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

**11.2. Marketing and Sales Activities.**

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

**11.3. Construction of Improvements.**

During the Declarant Control Period, Declarant and its employees, agents and designees shall have a right of access and use 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 as it deems appropriate in its sole discretion.

11.4. Right to Approve Additional Covenants.

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

11.5. Right to Transfer or Assign Declarant Rights.

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

11.6. Exclusive Rights to Use Name of Development.

During the Declarant Control Period, no person or entity shall use the name "Tuscany" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Tuscany" in printed or promotional matter where such term is used solely to specify that particular property is located within the community and the Association shall be entitled to use the words "Tuscany" in its name.

11.7. Right to Approve Changes in Community Standards.

During the Declarant Control Period, no amendment to or modification of any Rules and Regulations or Architectural Guidelines shall be effective without Declarant's prior written approval.

11.8. Easement to Inspect and Right to Correct.

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

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

11.8.3. Damage. Declarant shall promptly repair any damage to a Lot or the Common Area resulting from the exercise of the easement or right of entry described in subsections 11.8.1 and 11.8.2 of this Section at its own expense. The exercise of these easements shall not unreasonably interfere with the use of any Lot, and entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

11.9. Neighborhoods.

During the Declarant Control Period, Declarant, acting in its sole and absolute discretion, shall have the right, but not the obligation to establish separately developed residential Neighborhoods, recreational areas and amenity areas, or some, all or none of these, within the Community, and to designate Limited Common Area for the exclusive use of one or more, but less than all of Neighborhoods. Every Lot situated within a designated Neighborhood may be subjected to additional covenants, conditions, restrictions and additional assessments for services provided to Lots within such designated Neighborhood. Such additional covenants may be set forth in this Declaration or a Supplemental Declaration.

Any Neighborhood may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Lots in such Neighborhood. Upon the affirmative vote, of the Owners of a majority of the Lots within the Neighborhood, the Association shall provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Lot to all Neighborhoods receiving the same service), shall be a Neighborhood Assessment.

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

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

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

**Article XII. Easements**

12.1. Owners' Easements of Enjoyment. Except as limited by this Declaration and the Planned Community Act, every Owner shall have a right of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot. Except as limited by this Declaration and the Planned Community Act, any Owner may delegate his rights of use and enjoyment



of the Common Area to the members of his family, his tenants, contract purchasers who reside on the Property, or his guests.

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

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

12.4. Easement for Entry Features. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot and all Common Area. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

12.5. Construction and Sale Period Easement. Notwithstanding any provisions contained in the Declaration, the Bylaws, the Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration terminates and thereafter so long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across the Community for Declarant and any builder or developer approved by Declarant to maintain and carry on development, construction, and sales activities related to property within or near the Community, upon such portion of the Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient or incidental to the development, construction and sales activities related to property within or near the Community. This easement shall include, without limitation: (i) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in any portion of the Community as well as any Lot in the Community; (ii) the right to tie into any portion of the Community

with driveways, parking areas and walkways; (iii) the right to tie into or otherwise connect and use (without a tap-on or any other fee for doing so), replace, relocate, maintain and repair any device which provides utility or similar services; (iv) the right (but not the obligation) to construct recreational facilities on the Common Area; (v) the right to carry on sales and promotional activities in the Community; (vi) the right to place direction and marketing signs on any portion of the Community, including any Lot or Common Area; and (vii) the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities. Further, the Declarant and any builder or developer authorized by Declarant, may use residences, offices or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices, and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the person causing the damage at its sole expense. This section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.

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

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

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

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

12.10. Pedestrian Easements. To the extent that they are not maintained by the Owners of those portions of the Properties on which they are located, the Association shall maintain all Pedestrian Access Easements required to be located on any portion of the Properties pursuant to approved subdivision plan approvals and/or pursuant to plats of the Properties recorded in the register of deeds of the county in which the Property is located, and/or pursuant to written maintenance agreements with the municipal or county authorities.

### **Article XIII. Dispute Resolution and Limitation on Litigation.**

#### **13.1 Consensus for Association Litigation.**

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

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

#### **13.2. Alternative Method for Resolving Disputes.**

Declarant, the Association, its officers, directors and committee members, all Persons subject to this Declaration, any builder within the Community, and any Person not otherwise subject to the Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to use good faith efforts to resolve those claims, grievances, or disputes described in Section 13.3 ("Claims") using the procedures set forth in Section 13.4 hereof.

#### **13.3. Claims.**

Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements in the Community (other than matters of aesthetic judgment under Article V, which shall not be subject to review) shall be subject to the provisions of Section 13.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 13.4:

- a. any suit by the Declarant and/or Association against any Bound Party to enforce the provisions of this Declaration;
- b. any suit by the Declarant, Association or any Owner to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem

necessary in order to maintain the status quo and preserve the party's ability to enforce the provisions of this Declaration;

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

d. any suit 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 13.4.1 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.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 13.4.

#### 13.4. Mandatory Procedures.

13.4.1. Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

a. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

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

c. Claimant's proposed remedy; and

d. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

#### 13.4.2. Negotiation and Mediation.

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

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

c. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; however,

nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

d. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within Thirty (30) days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

e. Within five (5) days of the Termination of Mediation, the Claimant shall make a final written demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimants' original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

#### 13.4.3. Final and Binding Arbitration.

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

b. This subsection 13.4.3(b) is an agreement to arbitrate and is specifically enforceable under any applicable arbitration laws of the State of North Carolina. The arbitration award ("Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of North Carolina.

#### 13.5. Allocation of Costs of Resolving Claims.

13.5.1. Subject to Section 13.5.2, each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

13.5.2. Any Award that is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs, including reasonable attorney's fees, to the Award, such costs to be borne equally by all Respondents. Any Award that is equal to or less favorable to Claimant than any Respondents' Settlement Offer shall award such Respondent its Post Mediation Costs, including reasonable attorney's fees.

#### 13.6. Enforcement of Resolution.

If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 13.4 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 13.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

#### **Article XIV. Mortgagee Provisions.**

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

##### **14.1. 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"), shall be entitled to timely written notice of:

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

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

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

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

##### **14.2. No Priority.**

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

##### **14.3. 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.

14.4. 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.

14.5. Construction of Article XIV.

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

**Article XV. Changes in Common Area**

15.1. Condemnation.

If a Lot or portion thereof shall be taken by eminent domain, compensation and the Owner's interests in the Common Area shall be appropriately allocated among all other Owners. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least Sixty-seven (67%) percent of the total votes in the Association) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

a. If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining Common Area to the extent available, unless within sixty (60) days after such taking Declarant, during the Declarant Control Period, and Members representing at least eighty (80%) percent of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Article VIII regarding funds for restoring improvements shall apply.

b. If the taking or conveyance does not involve any improvements on the Common Area, 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.

15.2. Transfer, Partition, or Encumbrance of Common Area.

a. Except as this Declaration otherwise specifically provides, the Common Area shall not be judicially partitioned or subdivided into Lots, nor shall the ownership of the Common Area be otherwise divided or encumbered in any manner after conveyance to the Association, except upon the approval of Members representing at least Eighty (80%) percent of the total votes in the Association,

including a majority of the votes held by Members other than Declarant, and the consent of Declarant if during the Declarant Control Period.

b. The Association shall have the authority, subject to approval of Members representing a majority of the total votes in the Association, including a majority of the votes held by Members other than Declarant, and the consent of Declarant, if during the Declarant Control Period, to transfer portions of the Common Area and improvements thereon to appropriate governmental entities or tax-exempt organizations for the maintenance, operation, and preservation thereof; provided, any such transfer shall not relieve such Common Area from the rights and benefits of the Association and the Members as provided in this Declaration and shall otherwise be subject to the provisions of this Declaration.

#### **Article XVI Fines and Suspension of Privileges or Services.**

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

#### **Article XVII. Miscellaneous**

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

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

17.3 Amendment. Except as provided in Section 11.11 above, this Declaration may be amended only by a written instrument executed by the Association and authorized by the affirmative vote of at least sixty-seven percent (67%) of all Lots, cast in person or by proxy at a meeting held in accordance with the Bylaws of the Association. Any amendment must be recorded to be effective.

17.4 Enforcement. Subject to the provisions of Article XIII above, the Declarant, any Owner and/or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and obligations imposed by this Declaration. Subject to the provisions of Article XIII above, the Declarant, the Association or any Lot owner may bring any action necessary to enjoin any violation or breach of the provisions of this Declaration. The Declarant, the Association and/or any Owner shall be entitled to recover reasonable attorney's fees incurred in bringing and prosecuting such action from the breaching or violating Owner(s).

17.5 Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant or restriction contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter.



17.6 Assignment by Declarant. Any or all of the rights, powers, easements, functions and obligations reserved or given to the Declarant in this Declaration may be assigned to the Association, and the Association shall accept and assume responsibility for any or all such rights, powers, easements, functions and obligations when requested by the Declarant. Any such assignments or transfer shall be made by a Recorded Document, executed by both the Declarant and the Association, and the Association shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Declarant. The Declarant, but not the Association, shall thereupon be released from such obligations and duties.

17.7 Notice of Sale, Lease or Acquisition. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sales or lease, the name of the purchaser or lessee of the Lot and such other information as the Association may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the board may reasonably require.

17.8 Variances. Notwithstanding anything to the contrary contained herein, the Declarant and/or the Association or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if the Declarant or the Association determine that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

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

17.10 Captions. The captions herein are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit or describe the scope of any provision of this Declaration.

17.11 Law Controlling. This Declaration shall be construed and governed pursuant to the laws of North Carolina.

17.12 References to Statutes. All references herein to any statutory provision shall be construed to include and apply to any subsequent amendments to or replacements of such provision.

17.13 Consent to Subjecting Lots to Declaration. ForeverHome, LLC executes this Declaration to consent to the terms of the Declaration and to subject Lots owned by ForeverHome, LLC to the terms of this Declaration.

**IN WITNESS WHEREOF**, 42 East, LLC, as the Declarant hereunder, and ForeverHome, LLC as owner of Lots, has caused this instrument to be executed by its duly authorized Manager, all by order and authority duly granted by its members, as of the day and year first above written.

42 East LLC

By: [Signature]  
Gary Lynch, Manager

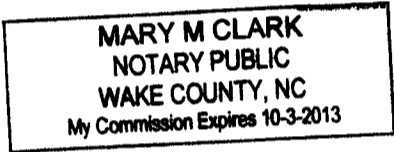
STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

I, the undersigned Notary Public of the County and State aforesaid, certify that Gary Lynch personally came before me this day and acknowledged that he is the Manager of 42 East LLC, a North Carolina limited liability company and acknowledged the due execution of the foregoing instrument as the act of said company.

Witness my hand and official stamp or seal, this 29<sup>th</sup> day of October, 2009.

Mary M. Clark  
Notary Public  
Type/Print Name: Mary M. Clark  
My Commission Expires: 10-3-2013



**FOREVERHOME, LLC**

A North Carolina limited liability company  
By its Manager:

**Imagine Holdings, LLC**

A North Carolina limited liability company.

By: *[Signature]*  
It's Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, *Janet W. Harris* the undersigned Notary Public, certify that  
*Larry E. Lipscomb* personally appeared before me this day  
and acknowledged that s/he voluntarily signed the foregoing instrument for the purpose stated therein and  
in his/her capacity as Member/Manager of Imagine Holdings, LLC, Manager of ForeverHome, LLC.

[stamp/seal]



Notary Public *Janet W. Harris*  
Printed Name: *Janet W. Harris*  
My Commission Expires: *Oct. 22, 2014*

Exhibit "A"

BEING all of that property described on that map entitled, "The Meadows at Tuscany, Phase 1" recorded in Plat Book 74, Page 280 Johnston County Registry; and

BEING all of that property described on those maps entitled "Phase 1 Tuscany Subdivision" as recorded in Plat Book 74, Pages 61-63, Johnston County Registry.