

**BK 4334 PG 77 - 109**

PREPARED BY: L. ALLEN HAHN

NORTH CAROLINA

RESTRICTIVE COVENANTS

PITT COUNTY

THIS DECLARATION, of Conditions, Restrictions and Covenants of THE ARBORS , I I Subdivision made on the date hereinafter set forth by LEVER & RUSSELL REAL ESTATE, LLC, a North Carolina Limited Liability Company, with its principal offices in Pitt County, North Carolina, hereinafter referred to as "Declarant" does hereby covenant and agree to and with all other persons, firms or corporations now owning or hereafter acquiring as owners any tract or parcel of land in the area designated.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Ayden Township, Pitt County, North Carolina, which is more particularly described as follows:

**Lying and being in the town of Ayden, Pitt County, North Carolina and being all of Lots 123 through 146 of The Arbors Subdivision, Phase 1B as shown on map recorded in Map Book 89, Pages 93 of the Pitt County Registry.**

WHEREAS, Declarant proposes to sell and convey Lots as shown of the aforesaid plat to be used for residential purposes and to develop said Lots and additional property within the Development Area which may be added to the development by the Declarant to be developed into a well planned Community by the Declarant: and

WHEREAS, Declarant, prior to selling and conveying the aforesaid residential Lots, desires To impose upon such Lots certain mutual and beneficial restrictions, covenants , conditions and charges (hereinafter collectively referred to as "Restrictions) for the benefit of all of the residential Lots in the Subdivision in order to promote the best interest and protect the investments of Declarant and Owners:

WHEREAS, to provide a means for meeting the purposes and intents set forth herein, Declarant has caused to be created The Arbors, II Homeowners Association of Ayden, Inc., its successors and assigns, a nonprofit corporation incorporated under Chapter 55A of the General

submitted electronically by "L. Allen Hahn"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Pitt County Register of Deeds.

Statutes of North Carolina.

NOW, THEREFORE, Declarant hereby covenants and declares, on behalf of itself and its successors and or assigns, that the real estate designated and described above shall from the date this declaration is recorded in the Register of Deeds be held, conveyed, acquired and encumbered subject to the Act and the terms and provisions hereof, all of which shall run with the real estate and bind and inure to the benefit of all prospective purchasers and parties who may acquire any right, title, estate or interest in or to any of such real estate or who may acquire any right of occupancy or entrance upon any portion thereof, all subject to the right of Declarant or the Association to amend this Declaration according to its terms.

## ARTICLE 1

### DEFINITIONS

Section 1. "Act" Act means Chapter 47F of the General Statutes of North Carolina designated as the North Carolina Planned Community Act.

Section 2. "Articles" means the Articles of Incorporation of The Arbors, II Homeowners Association of Ayden, Inc., its successors and assigns, as may be amended from time to time.

Section 3. "Association" shall mean and refer to The Arbors, II Homeowners Association of Ayden, Inc., its successors and assigns.

Section 4. "Association Documents" shall means collectively the Articles of Incorporation, this Declaration, the By-Laws and any other resolutions adopted by the Executive Board, all as may be amended, restated and revised from time to time.

Section 5. "By-Laws" means the Bylaws of The Arbors, II Homeowners Association of Ayden, Inc., its successors and assigns.

Section 6. "Common Area" shall mean any real estate within the Property owned or leased by the Association other than a Lot or dedicated to a municipality or the State of North Carolina and, any and all personal property, equipment and fixtures owned, leased, maintained or operated by the Association for the benefit of the Property or the Owners. Notwithstanding this definition, to the extent that the provisions of the Act apply to "Common Area", including, without limitation, the provisions of Section 47F-3-112, those provisions shall apply only to "Common Area" as defined in the Act. The Common Area is more fully described as follows:

Tract 1: Being all of those areas denoted as "Common Open Space 30' Sign, Landscape & Maintenance Easement - 0.08 acres" as shown on that map entitled The Arbors Subdivision, Phase IA as shown on map recorded in Map Book 70, Pages 80-82 of the Pitt County Registry.

Tract 2: Being all of those areas denoted as "Stormwater Detention Pond containing 2.82 acres" as shown on that map entitled The Arbors Subdivision, Phase IA as shown on map recorded in Map Book 70, Pages 80-82 of the Pitt County Registry.

All Common Areas and facilities thereon are private. The recording of a plat nor any other act of the Declarant is intended as a dedication to the public of any recreational facilities or amenities thereon.

Section 7. "Declarant" shall mean and refer to Lever and Russell Real Estate, LLC *i t s* successors and assigns.

Section 8. "Dedication" means the act of committing a portion of the Subdivision to the purposes of this Declaration.

Section 9. "Development Period" means a period Ten (10) years from the date this Declaration is recorded in the Register of Deeds; provided, that if Declarant is delayed in the improvement and development of the Property due to events beyond Declarant's control, then the period shall be extended for the length of the delay plus an additional two (2) years.

Section 10. "Landscaping" Landscaping means living plants, shrubs, tress, vegetation, ground coverings (including grass and sod) and any other living and non-living material or structure reasonably constituting a part of any Lot or common area.

Section 11. "Lot or Unit" means a separately numbered tract of land lying within the Subdivision and which, according to the plat of that portion recorded at the dedication thereof, may be conveyed to the Declarant and owned in fee the by Grantee thereof, and held for such uses as are consistent with this Declaration and the Restrictions covering the area wherein the tract is located. No tract of land shall be come a "Lot or Unit" as that word is used herein until the area on which the same is located is "dedicated."

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13. "Subdivision" means the property shown on the maps entitled "The Arbors Subdivision - Phase 1 B" as shown on map recorded in Map Book 89 Pages 93 Pitt County Registry and any additional property within the Development Area which has been or may be dedicated pursuant to this Declaration.

## ARTICLE 2

### CONFLICT WITH ACT; SEVERABILITY

Section 1: Each provision of the Association Documents is severable from every other provision and the validity of any one or more provisions shall not change the meaning of or otherwise affect any other provision. Should any of the terms, conditions, provisions, paragraphs

or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. In the event that any of the terms, provisions or covenants of this Declaration are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenant hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

Section 2: If there is any conflict between the Association Documents, the Declaration shall control.

### ARTICLE 3

#### THE ASSOCIATION

Section 1: A Corporation named The Arbors, II Homeowners Association of , Inc has been formed pursuant to the requirements of the Nonprofit Corporation Act as set out in the General Statutes of North Carolina as an association of the Owners of Lots. Its purposes are to own, manage, maintain, protect and operate the Common Area; to enforce the restrictions contained herein; and to make and enforce rules and regulations governing the Owner's use and occupation of Lots.

Section 2: The Association shall have two classes of voting membership.

Class A. Class A membership shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as then determined, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to ten (10) votes for each Lot owned, and notwithstanding any other provisions herein, shall not be assessed at any rate. Class B membership shall cease and be converted to the Class A membership when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, and in all events no later than June 30, 2032

Section 3: Membership. Members of the Association shall at all times be, and shall be limited to, the Persons who constitute Owners of the Lots. If more than one (1) person owns a Lot, then all of the Persons who own such Lot shall constitute collectively one (1) Owner. However, if more than one (1) person owns a Lot, then each such person is a Member of the Association; provided that multiple Members who own one (1) Lot are entitled collectively to

one (1) vote for each Lot owned. Each Person who is an Owner is entitled to attend all meetings of the Association.

Membership in the Association is mandatory. Upon acquiring title to a Lot, each new Owner shall immediately give written notice to the Secretary of the Association stating the name and address of such new Owner and the Lot acquired by such new Owner. If the new Owner fails to give the Secretary such notice within thirty (30) days of acquiring title to such Lot, then the costs of locating each new Owner and reasonable record keeping costs incurred by the Association may be assessed against such Owner.

Section 4: Unless otherwise specifically provided in the Association Documents, all rights, powers, and duties of the Association may be performed by the Board on behalf of the Association,

Section 5: As is more particularly defined herein and as set forth in Article 7, until the expiration of the Development Period, Declarant shall be vested with the sole and exclusive right to disapprove any action or decision of the Association on any and all matters, except such matters as to which the Act explicitly requires a vote of the Members.

#### ARTICLE 4

##### COMMON ELEMENTS

Section 1: Declarant shall convey the Common Elements to the Association in fee simple released from any encumbrance securing the repayment of monetary obligations incurred by Declarant, but subject to all easements and other encumbrances appearing of the public records including those created by this Declaration. The conveyance of the Common Elements as contemplated herein shall occur prior to or simultaneously with the conveyance of the first Lot to an Owner. The Association shall accept title to real estate and personal property offered to the Association by Declarant.

Section 2: Nothing contained herein shall be construed as a dedication to public use or as an assumption of responsibility for upkeep of any Common Elements by any public or municipal agency, authority or utility, nor shall it be constructed to prevent the Board from permitting public access to or use of any Common Elements.

Section 3: The Association shall have the right to regulate the use of the Common Elements pursuant to the Act and as provided herein and to charge fees for the use thereof. In the event the Association imposes fees for the use of the Common Elements, such fees to be charged to persons entitled to use the Common Elements shall be uniform and shall not discriminate against anyone or more persons or groups of persons entitled to use the Common Elements. The

Association may also mortgage, dedicate, convey, grant easements and other use or possessory rights in, over, under and across the Common Elements as permitted in the Act.

## ARTICLE 5

### EASEMENTS

Section 1: (a) Declarant hereby reserves to itself and its designees and Owner hereby grants a nonexclusive blanket easement to Declarant over and through the Property and Common Elements for all purposes reasonably related to the development, completion, maintenance, and upkeep of improvements on the Property and Common Elements, including without limitation: (i) temporary slope and construction easements; (ii) drainage, erosion control, and storm and sanitary sewer easements (including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; provided, however, that thereafter Declarant shall restore the affected area as near as practicable to its original condition); and (iii) the construction, installation and upkeep of improvements on the Property and Common Elements, or reasonably necessary to serve the same.

(b) Declarant hereby reserves to itself and its designees to: (i) use any Lots owned by Declarant, any other Lot with the written consent of the Declarant thereof, or any portion of the Common Elements as models, management offices, sales offices, a visitors' center, construction offices, or sales office parking areas; (ii) place and maintain, in any location on the Common Elements and on any Lot, street and directional signs, temporary promotional signs, entrance features, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features; provided, however, that all signs shall comply with applicable governmental regulations and Declarant shall obtain the consent of the Owner of any Lot upon which the improvements are to be located; and (iii) relocate, within the areas permitted by this paragraph, or remove all or any of the above from time to time at Declarant's sole discretion. These rights and easements shall continue throughout the Development Period.

(c) Declarant hereby reserves to itself and its assignees, during the Development Period, the right to grant and reserve easements, rights of way and licenses, over, through, upon and under the Property and the Common Elements for ingress, egress, installation and upkeep of equipment for providing to any portion of the Property, Common Elements or Additional Property any utilities including, without limitation, water, sewer, drainage, gas, electricity, communication services, whether public or private, or for any other purpose necessary or desirable. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed, maintained or relocated where

initially installed with the permission of Declarant, where contemplated on any site plan approved by Declarant.

(d) Declarant hereby reserves for itself, its successors and assigns, non-exclusive easements across, under, over and upon the Common Elements for (i) ingress, egress and regress for pedestrian and vehicular access to and from the Additional Property, and (ii) the installation, maintenance and provision of utilities including, without limitation, water, sewer, drainage, gas, electricity, communication services, whether public or private, or for any other purposes necessary or desirable for the orderly development of the Additional Property.

(e) Declarant hereby reserves to itself and its designees, during the Development Period, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Element or the Property.

Section 2: Any conveyances made by Declarant to the Association with respect to any of the Common Elements or the Property shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. Upon written request of Declarant, the Association and each Owner shall from time to time execute, acknowledge and deliver to Declarant such further assurances of these reservations of rights and easements as may be requested.

Section 3: Declarant may assign its rights under Article 5, or share such rights with, one or more other Persons. Declarant shall notify the Association of any such assignment or designation by Declarant

Section 4: Declarant, on behalf of itself and its successors and assigns, hereby grant the right of access over and through any Lot to the Association and any other Person authorized by the Executive Board, in the exercise and discharge of their respective owners and responsibilities, including without limitation to make inspections, correct any condition originating in a Lot or in the Common Elements threatening another Lot or the Common Elements, correct drainage, perform installations or upkeep of utilities, landscaping or other improvements located on the Property for which the Association is responsible for upkeep, or correct any condition which violates the Association Documents. The agents, contractors, officers and directors of the Association may enter any area of any Lot in order to utilize or provide for the upkeep of the areas subject to easements granted in this Article to the Association.

Until the expiration of any applicable warranty period, Declarant hereby reserves to itself and its designees, a right of access over and through the Common Elements and any Lot to perform warranty related work within the Common Elements or the Lots. Declarant may assign its rights under this subsection to, or share such rights with, one or more other Persons, exclusively, simultaneously or consecutively.

Section 5: These easements are subject to all other easements and encumbrances of record in the office of the Register of Deeds, including those created by this Declaration. Declarant or the Association, as appropriate, when exercising the rights and easements granted by this Article, shall: (i) give reasonable prior notice to all affected Owners, unless an emergency exists which precludes such notice; (ii) minimize any economic or aesthetic injury to the affected Lots or the Common Elements; and (iii) not unreasonably interfere with the affected Owners' use, enjoyment and benefit from such Owners' Lots or the Common Elements.

If an easement is relocated, the cost of such relocation shall be paid by the Person requesting the relocation. Any damage resulting from the exercise of the aforesaid rights and easements shall be promptly repaired and the site restored to the extent practicable by Declarant or the Association, as appropriate, or at the option of Declarant or the Association, the party responsible for such damage. In either case, the cost of such repair and restoration shall be paid for by the party responsible for the damage.

Section 6: Declarant on behalf of themselves and their successors and assigns, hereby grant an easement (i) to all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies and (ii) to the Association over and through all Lots, if emergency measures are required in any Lot to reduce a hazard thereto or to any other portion of the Property. The Association is hereby authorized but not obligated to take any such measures.

Section 7: Declarant hereby grants, and Declarant hereby reserves to itself and, on behalf of itself and its successors and assigns, to each Owner and each Person lawfully occupying a Lot a non-exclusive right and easement of use and enjoyment in common with others of the Common Elements. Such right and easement or use and enjoyment shall be appurtenant to each Lot, whether or not mentioned in the deed thereto. Any purported conveyance or other transfer of such rights and easements without the Lot to which such rights and easements are appurtenant shall be void.

Section 8: Vehicle and Pedestrian Access. Declarant hereby grant, and Declarant hereby reserves on behalf of itself and its successors and assigns during the Development Period



and for so long as Declarant is an Owner, to each other Owner and each person lawfully occupying a Lot a non-exclusive easement over all roadways, driveways, walkways, and pathways on the Common Elements for the purpose of vehicular and/or pedestrian access, ingress and egress, as appropriate, to any portion of the Property to which such person has the right to go, subject to any Rules and Regulations promulgated by the Association. Any purported conveyance or other transfer of such rights and easements without the Lot to which such right and easement are appurtenant shall be void.

Section 9: The rights and easements of enjoyment created hereby shall be subject (in addition to any easements granted or reserved in this Declaration or pursuant to the other Association Documents) to all rights and powers of Declarant and the Association when exercised in accordance with the other applicable provisions of the Association Documents, including without limitation the Association's right to regulate the use of the Common Elements and to establish reasonable charges therefor, to grant easements across the Common Elements, to dedicate portions of the Common Elements and to mortgage the Common Elements.

Section 10: Subject to the Rules and Regulations or such other restrictions as adopted by the Association, any Person having the right to use and enjoy the Common Elements may delegate such rights to such Person's guests, tenants, agents and invitees and to such other Persons as may be permitted by the Association.

Section 11: If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (1) the original construction thereof, (2) deviations within normal construction tolerances in the upkeep of any improvement, or (3) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time any encroachment exists. The Owner of the encroaching improvement shall also have an easement for the limited purpose of upkeep of the encroaching improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

Section 12: If the original design and construction of any improvements on a Lot shall result in an encroachment by a roof or eave over and upon the Common Elements or an adjacent Lot, an easement is hereby granted to the extent of any such encroachment for the period of time such encroachment exists, which easement shall continue upon any reconstruction or repair of the improvements in accordance with the original design and construction.

Section 13: To the extent that any portion of the Property now or hereafter supports or contributes to the support of any other portion of the Property, the former is hereby burdened

with an easement for the lateral and subjacent support of the latter.

Section 14: No Person who owns Property subject to this Declaration may subordinate the easements herein created to any subsequent encumbrance. The easements and rights granted by this Declaration shall not be enforceable by Persons to whom such easements and rights may be delegated by Owners, including without limitation the guests, tenants, agents or invitees of any Owner. This section does not affect, however, court-appointed officers in possession and control of a Lot acting in the name, place and stead of Owners or any Person's right to enforce any easements or rights granted in any lease or agreement between such Person and an Owner.

## ARTICLE 6

### ADDITIONAL PROPERTY DEVELOPMENT

Section 1: Declarant hereby reserves an option during the Development Period to expand the Property from time to time without the consent of any Owner or Mortgagee by submitting any additional real estate ("Additional Property") to the provisions of this Declaration and the jurisdiction of the Association whether or not such real estate is owned by Declarant. The option to expand prior to the end of the Development Period may be terminated only upon the recordation of an instrument in the Register of Deeds by Declarant relinquishing such option. Declarant shall add Additional Property in accordance with the procedures set forth in Section 2 of this Article. There are no limitations on the option to expand except as set forth in this Article.

Declarant may unilaterally record plats of the Additional Property to expand the land area referred to as Additional Property whether or not such real estate is owned by Declarant.

Section 2: Declarant may record in the Register of Deeds one or more amendments to the Declaration submitting all or any portion of the Additional Property described therein to this Declaration and to the jurisdiction of the Association. Any such amendment may contain such additions to the provisions in this Declaration as may be necessary to reflect the different character of the Additional Property added thereby and as are not inconsistent with the overall scheme of this Declaration; provided, however, that such additions shall not apply to any real estate previously submitted to this Declaration. When recording an amendment adding Additional Property, appropriate plats shall be recorded showing the Additional Property being submitted to the Declaration and the jurisdiction of the Association, describing any real estate being conveyed to the Association as Common Elements, Limited Common Elements or Common Elements that may be assigned as Limited Common Elements and showing any new Lots.

Section 3: During the Development Period, Declarant, at its option and without the consent of any other Person or Owner, reserves the right unilateral to withdraw any such portion of the Property from the Property, the provisions of this Declaration and the jurisdiction of the Association. Upon the election by Declarant to withdraw any portion of the Property, Declarant shall record with the Register of Deeds one or more amendments to this Declaration withdrawing the real estate described therein, which shall include a legally sufficient description of property withdrawn. When recording such an amendment withdrawing Property, appropriate plats should also be recorded by Declarant which will modify the Map so as to describe and designate the Property, or portion thereof, subject to the withdrawal.

#### ARTICLE 7

##### DECLARANT RIGHTS

In addition to each and every right of Declarant as set forth in this Declaration, Declarant, its successors and assigns, specifically reserves all Declarant Rights and Development Rights hereinafter set forth.

Section 1: Special Declarant Rights Reserved by Declarant.

(1) All Declarant Rights, as that term is defined in the Act, and any other Declarant Rights as are set forth in the Act and the Association Documents.

(2) The right to use any portion or all of the Common Elements for the purpose of aiding in the sale or rental of Lots. The foregoing right shall include the right to display and erect any signs, billboards, and placards and to store, keep and exhibit same and to distribute audio and visual promotional materials upon the Common Elements.

(3) The right to maintain sales offices, management offices and models in any and/or all of the Lots owned or leased by Declarant. Any Lots leased or owned by Declarant may be used by Declarant for such purposes, and such offices and models may be relocated as Lots are sold or leases expire.

(4) The right to use easements through the Common Elements for utility services, drainage and vehicular and pedestrian traffic, or otherwise, across, under or through the Common Elements as may be considered by Declarant desirable for the purpose of making improvements within the Property,

(5) The right to exercise any Development Right.

(6) The right to perform construction work, and to store materials in secure areas, in Lots, and in Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without

the consent or approval of the Board. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Declarant's Development Rights and Special Declarant Rights, whether arising under the Act or reserved in this Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, and other entities to fulfill the plan of development.

(7) The right to appoint, remove and replace the officers and members of the Board during the Development Period.

(8) The right to disapprove actions of the Board or any committee during the Development Period.

(9) The right to disapprove any amendment or change in any Association Documents during the Development Period.

(10) The right to enforce any covenants, restrictions and other provisions of the Association Documents during the Development Period.

(11) The right to amend this Declaration until the termination of the Development Period.

Section 2: Development Rights are the rights of the Declarant identified in this Declaration including, but not limited to the rights to: create Common Elements and Limited Common Elements within the Property; assign Limited Common Elements to Lots; convert Lots into Common Elements; and, withdraw property, Lots and Common Elements from the Property.

The Development Rights reserved by Declarant may be exercised with respect to different portions of the Property at different times, and Declarant makes no assurances as to the boundaries of those portions or the order in which those portions of the Property may be subjected to the exercise of the Development Rights. If a Development Right is exercised with respect to any portion of the Property, Declarant may, but is not obligated to, exercise any Development Right with respect to any other portion of the Property. The Development Rights reserved by Declarant must be exercised within the Development Period.

Section 3: The Special Declarant Rights reserved by Declarant shall terminate no later than the expiration of the Development Period. Any Special Declarant Rights may be terminated prior to the expiration of the Development Period by Declarant by recording an instrument evidencing said termination with the Register of Deeds.

Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.

Section 4: Any and all of the rights, powers and reservations of Declarant contained in this Declaration, including but not limited to those set forth in Article 5 and this Article 7, may be assigned by Declarant to any Person which will assume any and/or all of the duties of Declarant hereunder, and upon any such person, corporation or association's evidencing its consent in writing to accept such assignment, said assignee shall, to the extent of such assignment, assume Declarant's duties hereunder, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment, and to the extent thereof, Declarant shall be relieved from all liabilities, obligations, and duties hereunder. Declarant may limit and restrict the rights and powers which are assigned to any person, corporation, or association in the instrument which assigns such rights. The term "Declarant" as used herein includes all such assignees and their successors and assigns, subject to such restrictions or limitations as may be imposed in the instrument assigning such rights. Any assignment of all or any rights reserved by Declarant shall comply with N.C. General Statute §47F-3-104.

## ARTICLE 8

### COMMON EXPENSES AND ASSESSMENTS

Section 1: Common Expenses and Assessments: At least sixty (60) days before the beginning of each fiscal year, the Executive Board shall adopt a budget for the Association containing an estimate of the total amount considered necessary for the ensuing fiscal year to pay Common Expenses and cost of other expenses that may be declared to be Common Expenses by the Association Documents or by resolution of the Executive Board.

Such budget shall also include such reasonable amounts as the Executive Board considers necessary to provide working capital (available cash for day-to-day expenses which is otherwise uncommitted), a general operating reserve (including an amount to cover operating losses due to insurance deductibles) and reserves for contingencies (potential costs or liabilities which have not been incurred but which should be planned for) and replacements. At least thirty (30) days before the beginning of each fiscal year, the Executive Board shall make available a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and the assessment payable by each Owner and provide a copy of such budget to each member. Such

budget shall constitute the basis for determining the assessment against each Lot. The annual budget adopted by the Executive Board shall be presented to the Owners for ratification at a meeting as provided in the Bylaws and the Act. The budget is ratified unless at that meeting seventy-five percent (75%) of all of the Owners in the Association reject the budget. Should the Executive Board at any time determine, in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the Common Expenses of the Association during such fiscal year, or in the event of emergencies, the Executive Board shall have the authority to levy such additional assessments it may deem to be necessary.

Section 2: Assessments and Common Expenses.

(a) Rate of Assessments and Payment. Subject to the provisions of Section 3 hereof, the total amount of the estimated funds required for the management and upkeep of the Property set forth in the budget as an annual assessment or levied as an additional assessment shall be assessed against each Lot annually in amounts as determined by the Executive Board, which said amounts shall be equal for all Lots. The initial annual assessment shall be \$ \_\_\_\_\_ per originally platted lot per year. Any and all such assessments and other charges shall be a lien against each Owner's Lot as provided herein. On or before the first day of each fiscal year, and the first day of each succeeding payment period in such fiscal year, each Owner shall pay to the Association at such place as the Executive Board may direct that installment of the annual assessment which is due during such period. The Executive Board shall establish one or more payment periods and the due dates for each such payment in each fiscal year. All sums collected by the Executive Board with respect to assessments against the Lots or from any other source may be commingled into a single fund.

(b) Lots Added During the Fiscal Year. Notwithstanding any other provision of this Article, whenever any Additional Property is added; the assessment against each Lot being added shall be prorated based upon the number of days remaining in the payment period and shall be calculated in the same manner and due in the same number of installments as the assessment for the remainder of the fiscal year against Lots already a part of the Property.

(c) Special Assessments. The Executive Board shall have the power to assess an Owner's Lot individually (i) for the amount of and costs incurred by the Association in performing upkeep that the Owner failed to perform as required by that section, (ii) for the costs of improvements determined by the Board to be substantially for the benefit of that Owner, (iii) for the amount of any charges imposed on that Owner pursuant to Article 8, Section 2 (d) hereof,

and (iv) for any costs incurred by the Association because of any violation or negligence for which that Owner is responsible under the Association Documents or the Act. Each such assessment shall be due ten (10) days after notice thereof is given to the Owner unless the notice specifies a later date.

(d) **Optional Expenses.** Upon request, the Association may provide certain services to Owners (including Declarant) on a contractual basis; provided, however, that the charge for such services shall be assessed against such Owner's Lot in accordance with the terms of the contract.

(e) **Reserves.** The Executive Board shall build up and maintain reasonable reserves for working capital, contingencies and replacements. Such funds shall be a Common Expense of the Association and may be deposited with any financial institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Executive Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Reserves for items serving only certain Lots shall be accounted for and funded solely by the Owners served as a Limited Common Expense. As to each separate reserve account:

(i) Extraordinary expenditures not originally included in the annual budget, which may become necessary during the year, shall be charged first against the appropriate reserves. Except for expenses for normal upkeep shown in the annual operating budget, all expenses for repair and replacement of physical assets maintained by the Association shall be charged first against the appropriate reserves. Unless otherwise determined by the Executive Board, the amount held as reserves shall not substantially exceed the amount reasonably required to assure the Association's ability to replace components as they reach the end of their useful lives.

(ii) If regular maintenance extends the useful life of components so that reserves are excessive, the reserves shall be adjusted by reallocation to other budget items or by distribution to each Owner (including Declarant) in proportion to the percentage (if any) of assessments paid by such Owner.

(iii) If the reserves are inadequate to meet the actual expenditures for any reason (including non-payment of any Owner's assessment) then the Executive Board shall, in accordance with Article 8, Section 1 hereof, levy an additional assessment against the Lots.

### Section 3: Surplus and Deficit.

(a) Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Executive Board, be placed in reserve accounts, be

placed in a special account to be expended solely for the general welfare of the Owners, be credited to the next periodic installments due from Owner under the current fiscal years budget, until exhausted, or distributed to each Owner (including Declarant) in proportion to the percentage (if any) of assessments paid by such Owner.

(b) Unless the budget for the succeeding fiscal year is adjusted to amortize the deficit during such fiscal year, any net shortage in expenses (including reserves) shall be assessed promptly against the Owners as an additional assessment in accordance with this Article; provided, however, that during the period Declarant owns Lots exempt from assessment Declarant may, at Declarant's sole discretion, make up the shortage in the Association's budgeted income over the Association's expenses

Section 4: Exemptions. During the Development Period, Lots owned by Declarant shall not be obligated for, nor subject to any annual or special assessment for any Lot owned by Declarant, provided, however, that Declarant shall be obligated for paying for each Lot owned by Declarant which contains a Dwelling Unit for which a certificate of occupancy has been issued, one-fourth (1/4) of the total amount of any assessment levied by the Executive Board against such Lot(s). The Common Elements owned by Declarant or the Association shall be exempt from assessments and the lien created hereby. Notwithstanding this Section 4, a Lot owned by Declarant which contains a Dwelling Unit occupied as a residence (but not as a model or sales center) shall be assessed at the full rate levied against all Lots.

Section 5: Liability for Common Expenses. Declarant for each lot owned by Declarant, subject to Section 4, hereby covenants and agrees, and each Owner of a Lot by acceptance of a deed therefor, whether or not so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association all Common Expenses and other charges assessed by the Executive Board pursuant to the provisions of this Declaration. Each Owner shall be personally liable for all assessments against such Owner's Lot. No Owner may be exempted from liability for the assessment for Common Expenses by reason of waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot. No Owner shall be liable for the payment of any part of the Common Expenses assessed against the Lot subsequent to the date of recordation of a conveyance by such Owner in fee of such Lot Prior to or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Lot shall be jointly and severally liable with the selling Owner for all unpaid assessments against the latter for the proportionate share of the Common Expenses



up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Owner amounts paid by the purchaser therefor, provided, however, that any such purchaser may rely on a statement of common expenses obtained pursuant to Section 7 herein.

Each Mortgagee who comes into possession of a Lot by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against such Lot which accrue prior to the time such Mortgagee or purchaser comes into possession thereof. The lien created in Section 2 hereof shall cease to exist with respect to assessments and charges levied prior to the time title is transferred by foreclosure or by deed of assignment in lieu thereof; provided, however, that if the proceeds of a foreclosure exceed the total amount due to the Mortgagee, the excess shall first be paid to the Association and applied to the satisfaction of the lien.

Section 6: Collection of Assessments. Any assessment, or installation thereof, not paid within thirty (30) days after the due date shall be delinquent and shall accrue a late charge in the amount not to exceed the greater of Twenty Dollars (\$20.00) per month or ten percent (10%) of any assessment or installment thereof unpaid. The Executive Board, or the managing agent at the request of the Board, shall take prompt action to collect any assessments for Common Expenses due from any Owner or member which remain unpaid for more than thirty (30) days after the due date for payment thereof.

Section 7: Statement of Common Expenses. The Executive Board or managing agent shall provide any member, Owner, contract purchaser or Mortgagee, within three (3) days after a written request therefor, with a written statement of all unpaid assessments for Common Expenses due with respect to a specific Lot (or a statement that the amount of unpaid assessments is zero). No contract purchaser, Mortgagee or purchaser from a Mortgagee requesting such a statement shall be liable for, nor shall the Lot conveyed to such Person relying on such statement be subject to a lien for, any amount greater than unpaid assessments or charges due prior to the date of such set forth on such statement; provided, however, that this section shall not be interrupted to release any Person from personal liability for such assessments levied while such Person owned the Lot. The Executive Board may impose a reasonable charge for the preparation of such statement.

Section 8: Lien for Assessments. The total annual assessment of each Owner for Common Expenses, any additional assessment, any special assessment or any other sum duly levied (including without limitation fines, charges, interest, late charges, etc.), pursuant to the

Association Documents, is hereby declared to be a lien levied against any Lot owned by any Owner when a claim of lien is filed in the office of the Clerk of Court of Pitt County. Until fully paid and satisfied, the lien shall apply to and encumber all of the Lots that were owned, as of the date when payment was due, by the Owner from whom payment was due, and shall also apply to and encumber any and all Lots thereafter acquired by that Owner from the time such Owner becomes the Owner thereof. With respect to annual assessment, the lien is effective on the first day of each fiscal year of the Association and, as to additional assessments, special assessments and other sums duly levied, on the first day of the next payment period which begins more than fifteen (15) days after the date of notice to the Owner of such additional assessment, special assessment or levy. The lien created by this section shall be prior to all liens and encumbrances hereafter recorded except a first mortgage or first deed of trust held by a Mortgagee, real estate taxes and other charges levied by governmental authority and made superior by law. The personal obligation of the Owner to pay such assessment shall, in addition, remain such Owner's personal obligation and a suit to recover a money judgment for non-payment of any assessment or installation thereof, levied pursuant hereto, may be maintained without foreclosing or waiving the lien herein created to secure the same.

In any case where an assessment against the Owner is payable in installments, upon a default by such Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Executive Board, and the entire balance of the assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Owner.

The lien for assessments may be enforced and foreclosed in any manner permitted by the Act and laws of North Carolina for foreclosure of mortgages or deeds of trust containing a power of sale or by an action in the name of the Executive Board, or the managing agent, acting on behalf of the Association. The plaintiff in such proceeding shall have the right to the appointment of a receiver, if available under the laws of North Carolina. The Association shall have the power to bid on the Lot at foreclosure or other legal sales and to acquire, hold, lease, mortgage, convey or otherwise deal with such Lot.

A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section 9: Subordination and Mortgage Protection. Notwithstanding any other provision hereof to the contrary, the lien of any assessment levied pursuant to the Association Documents upon any Lot (and any charges, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a Mortgage made in good faith for value received; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to foreclosing or any proceedings in lieu of foreclosure. Such sale or transfer shall not relieve the Mortgagee or the purchaser of the Lot at such sale from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided herein.

#### ARTICLE 9

##### OPERATION OF THE PROPERTY

Section 1: Upkeep of Common Elements. The Association shall be responsible for the management and upkeep of all of the Common Elements, which upkeep shall be consistent with the community-wide standard established by the Association. If the Executive Board determines that certain upkeep was necessitated by the negligence, misuse or neglect of any Owner, the cost of such upkeep shall be assessed against such Owner's Lot. The Executive Board shall provide for the Upkeep of the Subdivision entrance, the retention pond and management fees.

##### Disclaimer of Liability.

(a) Bailee. The Executive Board, the Association, any member, any Owner and Declarant shall not be considered a bailee of any personal property stored or placed on the Common Elements (including property located in vehicles parked on the Common Elements), whether or not exclusive possession of the particular area is given to an Owner for parking or otherwise, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

(b) Operational. The Association shall not be liable to any Member or Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any portion of the Property. No diminution, offset or abatement of any assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property

by the Association or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any governmental authority. This Section is not intended nor shall it be construed to relieve any insurer of its contractual obligation under any policy benefitting the Association, a Member or an Owner.

#### ARTICLE 10

##### GENERAL PLAN OF DEVELOPMENT

Section 1: Declarant has established a general plan of development and occupancy for the Property in order to protect all of the Owners quality of life and collective interests, the aesthetic and environmental quality within the Property, and the vitality of the community within the Property.

Section 2: Authority to Promulgate Rules.

(a) Subject to the terms of this Article, the Board may adopt Rules and Regulations not inconsistent with the use restrictions set forth in Article 14 herein, and other such rules and regulations permitted by, and not inconsistent with the Act.

(b) The Owners, at a meeting duly called for such purpose, may adopt Rules and Regulations which modify, cancel, limit, or create exceptions to existing Rules and Regulations of the Association by a vote of Owners representing sixty-seven percent (67%) of the total vote and with the approval of Declarant during the Development Period.

(c) At least fifteen (15) days prior to the effective date of any action under subsections (a) or (b) of this Section 2, the Board shall send a copy of the Rules and Regulations to each Owner specifying the effective date of such Rules and Regulations.

(d) Nothing in this Article shall authorize the Board or the Owners to modify, repeal, amend, or expand the Association Documents except as set forth in such Association Documents.

#### ARTICLE 11

##### ARCHITECTURAL AND DESIGN STANDARDS

Section 1: Architectural Approval. During the Development Period, the Declarant shall have the sole and absolute right to determine the style and appearance of the Dwelling Units, including, but not limited to, flags subject to Section 47F-3-121 of the Act, flag poles, flag staff, fences, walls, buildings, outbuildings, garages, storage sheds, mailboxes, lawn decorations, structures of any type or color thereof, grading, landscaping, patio covers and trellises, plans for off-street parking of vehicles and utility layout, and any other improvements to be built or constructed on any Lot (hereinafter individually and collectively referred to as "Improvements").

After occupancy of a Dwelling Unit as a residence pursuant to a certificate of occupancy or other similar certificate issued by the appropriate governmental authority, no Improvements (including, without limitation, replacement of any previously existing Improvements) shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration thereof be made (including, without limitation, changing materials or color of any exterior portion of any such Improvements), nor shall a building permit for such Improvements or change be applied for or obtained, until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Association or by an Architectural Review Committee ("ARC") Composed of two (2) or more persons appointed by the Declarant or its assigns. The initial "ARC" shall be composed of Rocky Russell and David Lever. If the Association or its designee fails to approve or disapprove such proposed improvements within thirty (30) days after complete plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. The Association shall have the right to charge a reasonable fee for receiving and processing each application.

The Declarant and, after the expiration of the Development Period, the Association, shall have the right to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. Neither the Association nor the ARC shall approve any Improvements which it determines, in its sole discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the subdivision. After the expiration of the Development Period, the Board shall have the authority to promulgate and amend the Architectural Guidelines, and may delegate that authority to the ARC.

Neither the Declarant, the Association, the Board of Directors, the ARC, nor any member or employee of any of them, shall have any liability to any person or entity by reason of any acts taken or omitted by them, or any of them, in good faith pursuant to this Article.

Section 2: Rules and Regulations. The ARC may from time to time recommend to the Board, and the Board may, in its sole discretion, adopt, promulgate, amend and repeal rules and regulations interpreting and implementing the provisions of this Article 11, including the

imposition of a fee or charge for review of proposed improvements or modifications.

Section 3: Variances. Until the expiration of the Development Period, the Declarant shall have the sole authority to allow variances to the provisions of this Article 11 and the Architectural Guidelines. After the expiration of the Development Period, the ARC may recommend to the Board, and the Board may, by the vote or written consent of a majority of the members thereof, allow reasonable variances as to the covenants, conditions or restrictions contained in this Declaration, on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of the Property. Variances contained in plans that are inadvertently approved by the ARC as part of the proposed improvements shall not be considered as having been approved unless specifically approved by the Board in accordance with the provisions of this Section.

## ARTICLE 12

### INSURANCE

#### Section 1: Authority to Purchase.

(1) As soon as it is possible, the Executive Board shall purchase, to the extent reasonably available, and thereafter maintain, insurance policies, providing coverage for the Common Areas, and other matters more particularly set forth in this Article and liability insurance in the amount of \$1,000,000.00 on a commercial general liability policy covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Areas. The cost of all insurance policies purchased by the Board shall be a Common Expense. The policy shall be written on an "Occurrence Basis".

(2) The Executive Board shall exercise reasonable good faith efforts to insure that each such policy provides that: (a) Each Owner is covered by the insurance to the extent of his insurable interest as a member of the Association; (b) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policies; (c) The insurer waives any right to claim by way of subrogation against Declarant, the Association, the Executive Board, the managing agent, any member or the Owners and their respective households, guests, tenants, agents and invitees; (d) Such policy shall not be canceled, invalidated or suspended due to the conduct of any member or any Owner, or such Owner's tenant or such Owner's (or tenant's) household, guests, agents and invitees, or of any member, officer or employee of the Executive Board or the managing agent without a prior

demand in writing that the Board or the managing agent cure the defect and neither shall have so cured such defect within a reasonable time after such demand; and (e) Such policy may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to the Executive Board or the managing agent.

(3) All policies of insurance shall be written by reputable companies licensed or qualified to do business in North Carolina with an A.M. Best Rating of A-, Class VIII or higher.

(4) The deductible (if any) on any insurance policy purchased by the Executive Board shall be a Common Expense; provided, however, that the Association may, assess any deductible amount necessitated by the act, misuse or neglect of an Owner, or such Owner's tenant or such Owner's (or tenant's) household, guests, agents or invitees against such Owner.

(5) Declarant, so long as Declarant shall own any Lot, shall be protected by all such policies as an Owner or member whichever the case may be.

(6) If the insurance described in subsection (1) above is not reasonable available, the Association promptly shall cause notice of that fact to be hand delivered or sent pre-paid by United States mail to all Owners.

Section 2: Other Insurance. The Executive Board shall obtain and maintain:

(1) Fidelity coverage in the amount sufficient to cover the entire amount of the funds held, to protect against dishonest acts on the part of directors, officers, trustees and employees of the association and all others who handle, or are responsible for handling funds of the Association, including the managing agents. If the Executive Board does not handle the Association's funds, then no fidelity bond will be required of the Board. If the Association has delegated some or all of the responsibility for handling funds to a managing agent, such managing agent shall be covered by its own fidelity bond. Such fidelity bonds (except for fidelity bonds obtained by the managing agent for its own personnel) shall; (i) name the Association as an obligee, and (ii) contain waivers of any defense based upon the exclusion of Persons who Serve without compensation from any definition of "employee" or similar expression;

(2) property insurance on a Special Form to cover all Common Area property, including, flood insurance in accordance with the applicable regulations for such coverage;

(3) workers' compensation insurance if there are any employees to meet the mandatory requirements of law (including a voluntary employees endorsement);

(4) to the extent coverage can be obtained at a reasonable cost, directors and officers liability insurance in an amount not less than One Million and no/100 Dollars (\$1,000,000.00);  
and

(5) such other insurance: (i) as the Executive Board may determine; (ii) as may be required with respect to the Additional Property by any amendment to this Declaration adding such Additional Property; or (iii) as may be requested from time to time by a Majority Vote of the members.

Section 3: **Separate Insurance on Lots.** Each member or Owner shall obtain insurance for such member's or Owner's benefit, at such member's or Owner's expense, covering the Lot, Dwelling Unit, and personal property located on such Owner's Lot for property insurance in the full replacement cost of such property and liability insurance in an amount selected by the Owner. No member or Owner shall acquire or maintain insurance coverage on the Lots and improvements on the Lots insured by the Association so as: (i) to decrease the amount which the Executive Board may realize under any insurance policy maintained by the Board or (ii) to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by a member or Owner. No member or Owner shall obtain separate insurance policies on the Common Elements owned by the Association.

#### ARTICLE 13

##### COMPLIANCE ANTI ENFORCEMENT

Section 1: **General Default Remedies.** Every Owner and occupant of any Lot shall comply with the Association Documents and the Act. Failure to comply shall be grounds for an action by the Association to recover sums due, for damages, injunctive relief or any other remedy available at law and equity or under the Act.

Section 2: **Enforcement/Sanctions.** The Board or such other Association agent with the Board's approval, may impose sanctions for violations of Association Documents after notice and a hearing in accordance with the procedures set forth in the Declaration. Such sanctions may include, without limitation:

(1) Imposing reasonable monetary fines which shall constitute a lien upon the Lot of the Owner;

(2) Suspending an Owner's right to vote;

(3) Suspending any Person's right to use any recreational facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from the Lot;

(4) Suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge



owed to the Association; and

(5) Levying Assessments to cover costs incurred in bringing a Lot into compliance.

Section 3: Self-Help Remedies. The Board, or such other Association agent with the Board's approval, may elect to enforce any provision of the Association Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations: in accordance with any applicable ordinance(s) of Pitt County, North Carolina) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in Article 16 or in the Bylaws.

Section 4: Cumulative Remedies. The Association shall have all powers and remedies under the Act and the Association Documents which shall be cumulative of any remedies available at law or in equity.

Section 5: Association's Right Not to Take Action. The Association shall not be obligated to take action to enforce any covenant, restriction, or rule with the Board reasonably determines is, or is likely to be construed as, inconsistent with the applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under other circumstances or stop the Association from enforcing any other covenant, restriction or rule.

Section 6: Enforcement by Owner: Nothing set forth in this Article 13 shall prevent any aggrieved Owner from instituting any available remedy in law or in equity for a violation of the Association Documents.

Section 7: No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

Section 8: No Waiver by Declarant. The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or the other above-mentioned document, shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

Section 9: Attorneys' Fees. In any proceeding arising because of an alleged default by an Owner, the Association, if successful, shall be entitled to recover the costs of the

proceeding and such reasonable attorneys' fees as may be determined by the Court, but in no event shall any Owner be entitled to such attorneys' fees except as otherwise provided in the Act.

#### ARTICLE 14

##### USE RESTRICTIONS

Section 1: Any residence built on any lot shall be "stick built" only. No modular home, manufactured or mobile home shall be placed on any lot. No structure shall be placed or erected on any lot until Section 3, "Plan Approval" has been complied with.

Section 2: All Lots in this subdivision shall be known and described as residential lots for residential purposes only. No structure shall be erected, altered, placed or permitted to remain on any residential plot other than one detached single family dwelling. Each residential dwelling constructed on a Lot shall contain at least eleven hundred (1100) square feet of heated area. If such dwelling consist of a two (2) story dwelling, such dwelling shall have not less than six hundred (600) square feet of heated area on the first floor. Any two (2) story dwelling shall contain not less than twelve hundred (1200) square feet heated square feet for both floors. All driveways shall be of concrete materials .

Section 3: Plan approval: No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, dwelling units, outbuildings, driveways, fences, walls, or other structures shall be undertaken upon any lot in this subdivision without the prior approval of Declarant or its successors or designees. It is the intent of the parties that all exteriors of the structures shall be harmonious with all of the other structures in The Arbors Subdivision. All building plans or specifications showing the exterior materials being used and exterior paint scheme of the proposed improvements or outbuildings shall be submitted and approved by the Declarant or its successors or designees. Such approval in all events must be in writing. If no approval or rejection has been given for such planned use or for such plans which have been deposited or delivered to the Declarant, its successors or designees within thirty (30) days after written application, the plan shall be deemed to have been approved.

Section 4: Any permitted outbuilding or detached structure, pursuant to Section 3 herein, erected or placed on any lot shall be constructed with the same materials, quality, general appearance, workmanship and be aesthetically compatible with the dwelling located on said lot.

Section 5: Business Use Prohibited. No trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that the Declarant, real estate brokers, Owners and their agents may show Lots and dwellings for sale or lease.

Notwithstanding the foregoing, the Declarant and the agents and employees of each, shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices; (ii) maintain fluorescent-lighted or spot-lighted model homes which may be open to the public for inspection seven (7) days per week for such hours as the Declarant deems appropriate or necessary; (iii) conduct any other activities on Lots to benefit sales efforts; and (iv) use the parking facilities on the Common Elements for parking for its employees and invitees.

Section 6: Use of Accessory Structures. No tent, shack, barn, car port, metal awnings, metal utility sheds or other building, other than a Dwelling Unit, shall be erected on a Lot, and used temporarily or permanently as a residence, nor shall any such structure be used for any other purpose. Notwithstanding the foregoing, the Declarant, may use temporary buildings, offices or facilities in connection with the marketing, sale and construction of Dwelling Units.

Section 7: Maintenance of Improvements. Each Owner shall maintain in good condition and repair all improvements constructed upon such Owner's Lot, including, without limitation, the Dwelling Unit.

Section 8: Storage: Clothes Hanging. No Lot or Common Area shall be used for the storage of rubbish. Outside clothes hanging devices shall not be permitted.

Section 9: Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No automobile or other vehicle mechanical repairs or like activity shall be conducted within the Property other than in a garage and concealed from public view.

Section 10: Lawns and Lawn Maintenance. Each Lot on which there is a completed Dwelling Unit shall be maintained in a neat condition by the Owner thereof or, as appropriate, the Association. "Neat" shall require, at a minimum, that the lawn be regularly cut and fertilized and that mulched areas be regularly re-mulched and kept weeded so that its appearance is in harmony with the neighborhood. No Owner shall allow the grass on a Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground. All improved Lots must have sodded front yards from the curb to the front of the house; no gravel or similar type lawns are permitted. Every dwelling shall have ten (10) three-gallon shrubs planted in the front yard.

Section 11: Failure to Maintain. If an Owner fails to maintain the Lot or the improvements thereon, the Association, after giving such Owner at least ten (10) days' written

notice, shall be authorized to undertake such maintenance at the Owner's expense. By accepting title to his Lot, each Owner shall be deemed to grant access upon the Owner's Lot and Dwelling Unit for such purpose and such entry shall not constitute a trespass. If such maintenance is undertaken by the Association or Declarant, the charge therefor and all costs of enforcement and collection shall be secured by a lien against the Lot as provided in Article 8 hereof.

Section 12: Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of cats, dogs, and other household pets may be kept provided they are kept within the residence or within an enclosed area concealed from public view and are not kept, bred, or maintained for any commercial purposes or become a nuisance to the neighborhood. No person owning or having custody of an animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on or in the Common Elements at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's Dwelling Unit. The Owner shall be responsible for cleaning all droppings from their animals. The association shall have the right to expel animals from the community for the Owners continuing violation(s) of the governing documents.

Section 13: Signs. No signs shall be displayed on any Lot with the exception of one "For Sale" not exceeding 36" x 24" in size. The Association may develop uniform sign standards and specifications to which all Owners must adhere. No sign of any kind shall be displayed in or on the Common Elements without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Elements, in connection with the development and sale of the Lots.

Section 14: Water Retention Areas. The Association shall be responsible for maintaining those portions of the storm water drainage system which are within the Common Element which are not maintained by another municipal, state or private entity, including the water quality and quantity standards of the approved plans, to the extent required by law. A drainage easement is hereby dedicated to the Association for the purpose of maintaining the storm water system to meet water quality and quantity design standards of the approved plans and any future governmental laws, rules or regulations.

Each Owner of a Lot which borders a water retention area shall maintain any portion of that Owner's Lot lying within a retention area free of debris but shall not remove any wetlands species or do anything that would affect adversely water quality within the water retention area.

Swimming and bathing in water retention areas are prohibited. Docks or other structures shall not be erected in water retention areas without the prior written consent of the Association. All other uses of water retention areas shall be subject to the prior written approval of the Association and such rules and regulations as the Association may adopt from time to time.

**Section 15: Vehicles, Boats and Trailers.** No vehicle of any kind shall be parked on any grass or unimproved surfaces of any Lot. No truck or vehicle used primarily for commercial purposes (other than those temporarily present on business) and no recreational vehicles or campers, and no trailer may be parked within the Property. No vehicle not in operable condition and validly licensed may be kept on the Property. No boats or boat trailers may be kept in the front yard of any lot. The Association shall have the right to tow or remove any boat, trailer, or vehicle of any type which is parked within the Property or kept on any Lot in violation of this section, at the owner's expense, and the owner of each Lot, by acceptance of their deed, does grant to the Association such an easement on, across, and upon their Lot as may be necessary to enforce the provisions set out in this section.

**Section 16: Walls, Fences and Hedges.** No fences shall be permitted on any Lot unless erected by Declarant or approved by the Declarant or the ARC. Only decorative fences shall be allowed in the front yard of the dwelling as may be approved by the ARC. For purposes of this provision, "front yard of the dwelling" shall mean the area between the street on the which the dwelling faces and the front face of the dwelling. Decorative fences are limited to 3 feet in height and shall be installed no closer to street than the right of way.

Approved fences may be wood, PVC, and black chain link. Approved fences may not exceed six feet in height. A fence approved for one Lot shall not be considered approval of the same or similar fence on any other Lot; Each such fence must have the approval of the ARC. Any privacy fence approved may be any closer to the Street than the rear of the main dwelling except to enclose a side door on the dwelling. No privacy fence on a Corner lot that adjoins a street may be any closer to the side street than the minimum building line.

**Section 17: Satellite Dish, Antennae and Roof Structures.** No satellite dish, radio or other electrical towers, aeriels, antennae, or other devices of any type for the reception or transmission of radio broadcasts or other means of communication shall be erected, constructed,

placed or permitted to remain on any Lot or upon any improvements thereon, except a small dish no larger than 18 inches in diameter to be placed in the rear of the lot and approved pursuant to Article 11, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

Section 18: Visual Obstructions at the Intersections of Public Streets. No object or thing which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways within the triangular area formed by the junction of street curb lines and a line connecting them at points twenty-five (25) feet from the junction of the street curb lines (or extensions thereof) shall be placed planted or permitted to remain on any corner lots.

Section 19: Leased Dwelling Units. An Owner may not lease or sublet his Dwelling Unit.

Section 20: Service Utilities, Fuel Tanks, Wood Piles, Trash. All service utilities, fuel tanks, wood piles and trash and garbage containers shall not be placed on any lot so as to be visible from the street on which the home faces.

Section 21: Flags. Subject to Section 47F-3-121 of the Act, the design, materials and location of all flags, flag poles, flag staffs, shall be approved by the ARC prior to installation or display pursuant to the approval requirements of Article II of this Declaration.

Section 22: No bicycle or skateboard ramps materials may be placed on any Lot or common area.

Section 23: Deviations. Declarant at its independent sole discretion, is hereby permitted to approve deviations to restrictions in Article 14 in instances where in its judgment, such deviation will not adversely affect the development of the Property as a whole. Such approvals must be granted in writing and when given will automatically amend these restrictions for that certain Lot only.

## ARTICLE 15

### AMENDMENT

Section 1: Amendment by Declarant. Until the termination of the Development Period, Declarant may unilaterally amend this Declaration for any purpose, including, but not

limited to, as provided in Article 6 of this Declaration,

**Section 2: Amendment by the Association.**

(1) The Association may amend this Declaration by at least a sixty~seven percent (67%) affirmative vote of the members.

(2) An amendment shall not be effective until certified by the President as to compliance with the procedures set forth herein, executed and acknowledged by the President and attested by the Secretary or Assistant Secretary of the Association, and recorded in the office of the Register of Deeds.

**Section 3: Prerequisites to Amendment by Association.** Written notice of any proposed amendment shall be sent to every member and Owner at least thirty (30) days before any action is taken. No amendment shall be made to the Declaration during the Development Period without the prior written consent of Declarant. No amendment shall increase the financial obligations of an Owner in a discriminatory manner or further restrict development permitted on a Lot. No amendment to the Declaration shall diminish or impair the rights of Declarant, including voting or veto rights, under the Declaration without the prior written consent of Declarant. No amendment may modify this Article or the rights of any Person hereunder. Except as specifically provided in the Declaration shall be construed to grant to any Owner or to any other Person any priority over any rights of Mortgagees.

## ARTICLE 16

### CONDEMNATION

**Section 1: Definition.** For the purposes of this Article, "Taking" means an acquisition of all or any part of the Common Elements or of any interest therein or right accruing thereto as a result of, in lieu of or in anticipation of the exercise of the right of condemnation or eminent domain, or a change of grade caused by action or a governmental entity affecting the value of any portion of the Common Elements so severely as to amount to condemnation.

**Section 2: Taking of Common Elements.** If there is a Taking of all or any part of the Common Elements, then the Association shall notify the members and Owners, but the Executive Board shall act on behalf of the Association in connection therewith and no members or Owners shall have any right to participate in the proceedings incident thereto. The award made for such Taking shall be payable to the Association, to be disbursed as follows: if the Taking involves a portion of the Common Elements on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on another

portion of the Common Elements, to the extent land is available therefor, in accordance with plans approved by the Executive Board, unless within sixty (60) days after such Taking the Declarant (during the Development Period) or the members by a sixty-seven percent (67%) vote of all classes (after the Development Period) shall otherwise agree. The provisions of the Act regarding the disbursement of funds following a Taking, damage or destruction shall apply.

#### ARTICLE 17

##### TAXES

Pursuant to the provisions of N.C. Gen. Stat. §47F-1-105, each Lot and its appurtenant undivided interest in the Common Elements shall be deemed to be a parcel and shall be separately assessed and taxed by each assessing Lot and special district for all types of taxes authorized by law, including but not limited to special ad valorem levies and special assessments. Each Owner shall be liable solely for the amount of taxes against his individual Lot and shall not be affected by the consequences resulting from the tax delinquency of other Lot Owners. Neither any building, the Property nor any of the Common Elements shall be deemed to be a parcel.

#### ARTICLE 18

##### DURATION

Section 1: The Covenants and Restrictions contained in this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which shall automatically extended for successive periods of ten (10) years.

Section 2: Invalidation of any one of these covenants or Restrictions by judgement of court order shall in no way affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Lever & Russell, LLC, the Declarant has caused this instrument to be executed

in their name by corporate authority duly given this the \_\_\_\_ day of September, 2022.



LEVER & RUSSELL, LLC

BY: *Rory Russell* (SEAL)  
Rory E Russell, Member/ Manager

STATE OF NORTH CAROLINA  
COUNTY OF Pitt

I, Nicole Congleton, a Notary Public of the aforesaid County and State do hereby certify that Rory E Russell, Member/ Manager of **Lever & Russell, LLC** either personally known to me or proven by satisfactory evidence (said evidence being NCDL), personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument by he/she/they for the purposes stated therein.

Witness my hand and Notarial Seal, this the 16 day of September, 2022.

*Nicole Congleton*, Notary Public  
My Commission Expires: 5-27-25

