

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR  
LAKESIDE RESERVE  
A PLANNED COMMUNITY**

**DRAWN BY AND MAIL TO:**

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submitted electronically by "Bradley Arant Boulton Cummings LLP - Main Account"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Burke County Register of Deeds.



2.1. “Additional Property” shall mean the property described on **Exhibit B** attached hereto, all of any portion of which may from time to time be made subject to the Declaration pursuant Section 10.3 hereof and which, when so subjected, shall become a part of the Property.

2.2. “Articles of Incorporation” shall mean the Articles of Incorporation of the Association.

2.3. “Association” shall mean Lakeside Reserve Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

2.4. “Assessments” shall mean, unless the context otherwise requires, Base Assessments, Specific Assessments and Special Assessments as described herein.

2.5. “Base Assessment” shall mean the assessment levied on all Parcels subject to assessment under Article IX below to fund Common Expenses, as determined in accordance with Article IX below.

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

2.7. “Bylaws” shall mean the bylaws of the Association which are attached hereto as **Exhibit C**, as they may be amended from time to time.

2.8. “Common Area” shall mean all property, and any improvements thereon, wherever located, including the Common Drives, easements or public rights of way for use and enjoyment of Members. Common Area shall include any drainage easements, storm water pipes, detention and retention facilities serving more than one Parcel and not accepted by any governmental authority for maintenance. Common Area shall include, but not be limited to, all property identified on the Plat as “Common Area”, “C.O.S.”, “Common Open Space”, or “Open Space”.

2.9. “Common Drives” shall mean, collectively, the streets, alleyways and roads, intended for vehicular traffic as shown on the Plat. The Common Drives shall include the thirty feet (30’) wide shared drive shown on the Plat (Page 6 of 8) and labeled as “30’ Non-exclusive Private R/W” which shared drive shall be maintained by the Association.

2.10. “Common Expense” shall mean, except as otherwise specifically provided in the Governing Documents, all of the expenses that the Association incurs, or expects to incur, connection with the ownership, maintenance, and operation of the Common Area, Common Drives and otherwise for the benefit of all Owners.

2.11. “Declarant” shall mean Jumping Run Land, LLC, a Colorado limited liability company, or any successor or assign designated as Declarant in a Recorded Document executed by the immediately preceding Declarant, the authority for such designation or assignment shall rest solely with the assigning Declarant and the Person agreeing to such assignment or designation.

2.12. “Declarant Control Period” shall mean the period of time during which Declarant owns any Parcel or any portion of the Property or any Additional Property subjected to this Declaration.

2.13. “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions for Lakeside Reserve, and any supplements or amendments hereto or restatements hereof.

2.14. “Dwelling” shall mean a building constructed on a Parcel designed for year-round habitation, including bathroom and kitchen facilities, and designed for or used as a residence by a family or household unit.

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

2.16. “Parcel” shall mean a plot of land within the Community designated for separate ownership or occupancy and residential use and shown on a recorded plat, whether or not improvements are constructed on that land, which constitute or will constitute after the construction of improvements, a Dwelling site as shown on a plat recorded in the land records in the county where the Community is located.

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

2.18. “Membership” shall mean all Members, as a group.

2.19. “Mortgage” shall mean a deed of trust or mortgage recorded at the Burke County Registry that is a lien against any Parcel. “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 Parcel. “First Mortgagee” shall refer to a beneficiary or holder of a First Mortgage.

2.20. “Owner” shall mean and refer to an owner of record of a fee simple interest in any Parcel, including contract sellers, but excluding any Mortgagee (prior to taking title to a Parcel by foreclosure or otherwise) having an interest only as security for the performance of an obligation. There may be no more than four Owners of any single Parcel. No “timeshare” or “timeshare units”, as defined in Chapter 93A of the North Carolina General Statutes, may be created as to any Parcel or structure.

2.21. “Person” is defined as any natural person, corporation, partnership, limited liability company, association, trust or other legal entity.

2.22. “Plat” shall mean the plat of the Property showing the location and boundaries of the Parcels and the location of the Common Drives, which Plat is recorded in Plat Book 59, Page 65-72 in the Burke County Registry. The term Plat, as used hereunder, shall include any modification, revisions or additions to the Plat made by the Declarant hereunder.

2.23. “Property” shall mean and refer to all that real property described or depicted on **Exhibit A** attached hereto.

2.24. “Recorded Document” shall mean any document, including, without limitation, any map or plat of survey, recorded at the Office of the Register of Deeds of Burke County, North Carolina.

2.25. “Rules and Regulations” shall mean the rules and regulations for use and occupancy of the Parcels and the Common Area as they may be promulgated, supplemented, modified, restated or superseded pursuant to Article IV below.

2.26. “Special Assessments” shall mean assessments levied in accordance with Section 9.2 and any other related sections below.

2.27. “Specific Assessments” shall mean assessments levied in accordance with Section 9.2 and any other related sections below.

2.28. “Waterfront” shall mean with respect to each Parcel, the portion of the Parcel directly abutting Lake Rhodhiss.

### **ARTICLE III.**

#### **Lakeside Reserve Homeowners Association, Inc.**

Every person who is an Owner of any of the Parcels 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:

(i) To maintain and preserve all Common Areas as well as the Common Drive;

(ii) To enforce the provisions of the Governing Documents;

(iii) To perform all duties and functions allotted to owners' associations pursuant to Article 3 of the Planned Community Act;

(iv) To promote and to protect the enjoyment and beneficial use and ownership of the Parcels; and

(v) To promulgate and enforce the Rules and Regulations and administrative rules and regulations for the use of the Common Area, Common Drives and for the use and occupancy of the Parcels.

3.2. Powers and Responsibilities. The Association shall have all powers and responsibilities and shall perform all duties and functions allotted to owners' associations by

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

3.3. Voting Rights and Meetings. On matters of Association business that are required to be submitted to vote of the Membership, every Person who is an Owner shall be a Member and shall be entitled to one (1) vote per Parcel. No more than one vote per Parcel may be cast by the Member, regardless of the number of Owners of a given Parcel. During the Declarant Control Period, all matters hereunder that are indicated as being subject to the vote of the Members, shall be decided by the Declarant in its sole and absolute discretion, and the vote of the Members as described herein is intended to affect only those matters requiring a vote that arise after the Declarant Control Period.

Unless otherwise provided herein or in the Planned Community Act or the Bylaws, 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. Meetings of the Members shall be held and conducted in the manner set forth in the Bylaws.

3.4. Bylaws. The Bylaws attached to the Declaration are hereby adopted as the Bylaws of the Association and such Bylaws shall be binding upon all Members, their Mortgagees, lessees, agents, invitees, and assigns.

#### ARTICLE IV.

##### Use and Occupancy of Parcels and Common Areas.

4.1. Fundamental Restriction on Use. The Parcels, Common Area and Common Drives shall be used for residential, recreational and related purposes only, subject to and consistent with the Governing Documents. Notwithstanding the above, home business use ancillary to the primary residential use of a Parcel 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 Parcel shall be members of a Single Housekeeping Unit. For purposes of this Declaration, a "Single Housekeeping Unit" is defined as a single family and not more than two (2) unrelated persons. The number of occupants on each Parcel shall also be reasonably limited by the Parcel's size and facilities and by a policy against disproportionate use of the Common Areas.

4.3. Additional Restrictions on Use and Occupancy of Parcels. Use and occupancy of all Parcels shall be restricted as follows:

4.3.1. *General Restriction; Residential Use; Square Footage; Completion of Construction.*

A. Any construction, erection, placement, or modification of any structure, permanently or temporarily, on any Parcel or other portion of the Land, whether such Parcel or portion is improved or unimproved, shall not be allowed except in strict compliance with the provisions of Article V of the Declaration.

B. All Parcels shall be used for single-family residential purposes only. No structure erected, altered, placed or permitted to remain on any Parcel shall exceed two and one-half (2½) stories above the foundation of the Dwelling measured from the foundation of the Dwelling to the highest point of the Dwelling.

C. On each Parcel, there may be constructed one primary Dwelling; which shall not be less than: (i) 1,600 square feet of heated floor area for Waterfront lots 1 (lots 39-47, 156-162, 168-178, 191-198, 213-219, 226-229); and (ii) 1,400 square feet of heated floor area for Non-Waterfront lots (lots 14-38, 48-50, 152-154, 163-167, 179-190, 199-212, 220-225, 230-243), exclusive of garage, unheated storage areas and non-living space for dwelling. The exterior finish, materials and other building standards shall be subject to approval by ARC and the building and construction guidelines promulgated hereunder, as the same may be amended in accordance with Article V below. No Dwelling may be constructed unless the Owner of a Parcel has complied with the provisions of Article V of this Declaration and received approval of the ARC.

D. On each Parcel, there may be constructed no more than one additional detached building which shall be constructed in the same style and manner of the primary Dwelling with regard to siding, style and roof color. Guest quarters shall be permitted above the detached building. No such detached building (including garages) shall be erected, constructed or placed on any lot, until its construction plans and specifications showing proposed design, type of construction, materials and site location have been submitted to the ARC and approved. Further the structure must be of permanent construction and have a like exterior and be in architectural keeping with the Primary dwelling. Prefabricated buildings are strictly prohibited. If the detached building is being used as a garage, it shall contain at least two (2) standard size interior parking spaces usable for parking vehicles. All garages must have electric door openers and garage doors shall be maintained in good working condition and shall be kept closed when not in use. No carports will be permitted. In no event shall construction of any secondary detached building be allowed until such time as construction of the primary Dwelling has commenced (as evidenced by the issuance of building permit for the primary Dwelling and pouring of footings or foundation for such primary Dwelling).

E. One detached "open air" structure such as a gazebo or pavilion is allowed on each Lot. No such structure shall be erected, constructed or placed on any lot, until its construction plans and specifications showing proposed design, type of construction, materials and site location have been submitted to the ARC and approved. Any such structure must be of permanent construction and be in architectural keeping with the Primary dwelling. Prefabricated buildings are strictly prohibited

F. A violation of any provisions or restrictions of this Declaration or the Rules and Regulations may result in (1) removal of any such improvements or correction of such violations by Declarant, the Board and the cost thereof assessed against the Owner of that Parcel as a Specific Assessment; and/or (2) legal or

equitable action filed against the violating Owner by Declarant or the Board in order to compel enforcement of the terms of this Declaration or the Governing Documents with both the pre-filing costs and the costs of the action itself assessable against the violating Owner as a Specific Assessment; and/or (3) fines assessed by Declarant or the Board as Specific Assessments against a violating Owner in order to compel compliance. Any reference below to the removal of violations, assessment of the charges of removal against the violating Owner or the like shall in no way limit the Declarant or Board's authority under this section or any other section of this Declaration or the other Governing Documents to address violations of the provisions or restrictions hereof; such statements are included below to reiterate this power of the Declarant or Board.

4.3.2. *Subdivision of Parcels.* Except for the rights of the Declarant to replat or reconfigure any Parcel or Parcels and to create additional Parcels as set forth in Section 10.1 below, no Parcel shall be subdivided, provided; however, Owners of adjoining Parcels may adjust a common boundary line, provided that the adjustment conforms in all respects with all applicable governmental regulations and ordinances and with this Declaration, and provided that such adjustment is consented to by Declarant during the Declarant Control Period and thereafter by the Association. The foregoing notwithstanding, an Owner of a Parcel that was originally shown on the Plat as containing more than four (4) acres, upon the expiration of two (2) years after such Owner acquired such Parcel, may subdivide the original parcel into two Parcels of approximately equal size; provided, the subdivision plat of such proposed subdivision shall be prepared at the Owner's expense, and shall be subject to the reasonable review and approval of the ARC. Upon any such subdivision, each resulting Lot shall be a Lot for all purposes hereunder, including for the purposes of levying and paying assessments as set forth herein.

4.3.3. *Combination of Parcels.* If an Owner owns two (2) adjoining Parcels, that Owner may combine the two (2) adjoining Parcels into one (1) Parcel, upon which the Parcel cannot then, be further subdivided. The Association shall treat the resulting Parcel as one (1) Parcel in the levying of any Assessments, including the Base Assessment if the Owner informs the Association of its intent to recombine at the time of the closing on such Parcels. When an Owner has indicated the intent to combine two parcels at the time of Purchase, the Owner shall have sixty (60) days from the date of closing to complete the consolidation of the Parcels and provide the Association with proof of final approval of all governmental authorities and a copy of the final recorded recombination plat. If the required proof of recombination is not provided in such sixty (60) day period, then the Association shall continue to bill each separate Parcel until such time as the required documentation is provided and the Parcel Owner shall pay the Association any Base Assessment or other charges for the Parcels to be combined that have previously been deferred based on the Owner's election to combine its Parcels. Any such recombined Parcel may not thereafter be subdivided.

4.3.4. *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 the Common Drives or any other Parcel. Incinerators for garbage, trash or other refuse shall not be permitted on any Parcel.



4.3.5. *Storage of Building Materials and Fuels.*

A. No lumber, brick, stone, cinder block, concrete block, cement or other materials used for building purposes, unless otherwise approved by Declarant, shall be stored upon any Parcel longer than a reasonable time for the completion of the construction in which they are to be used, but in no event, longer than twelve (12) months from start of home construction.

B. On-site storage of gasoline, heating, or other fuels is prohibited, except that a reasonable amount of fuel may be stored on each Parcel (above ground) for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store reasonable quantities of fuel for operation of maintenance vehicles, generators, and similar equipment. In addition, Owners may use propane grills and propane heaters on their Parcels and as such shall be allowed to use and store propane tanks such as those sold in the retail market for such uses. All such gasoline, heating oils, propane tanks or other fuels shall in all events be handled in accordance with applicable laws.

4.3.6. *Offensive or Dangerous Activities Prohibited.* No noxious or offensive activity shall be conducted upon any Parcel or Common Area or any other portion of the Community, nor shall any activity be conducted thereon tending to cause malodorous emissions, embarrassment, discomfort, annoyance or nuisance to the neighborhood or tending to disturb the peace or endanger the safety of Owners or occupants of any Parcel. Examples of the foregoing may include, without limitation:

A. Pursuit of hobbies or other activities, which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Parcel, including but not limited to the maintenance and repair of vehicles;

B. Outside burning of trash, leaves, debris, or other materials;

C. Use or discharge of any radio, car stereo, loudspeaker, horn, whistle, bell, wind chimes, or other sound device whether once or on a consistent basis so as to be audible to occupants of other Parcels, except alarm devices used exclusively for security purposes.

D. Dumping of petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, or elsewhere within the Community, except that organic fertilizers may be applied to landscaping on Parcels provided care is taken to minimize runoff, and Declarant and builders may dump and bury rocks removed from a building site on such building site.

E. Accumulation of rubbish, debris, garbage, or other waste materials which would render a Parcel unsanitary, unsightly, or offensive as determined by Declarant, or the Association, as applicable.

4.3.7. *Screening.* Campers, satellite dishes, antennae, patios, arbors, and the like shall not be located on a Parcel so as to be visible from the Common Drive. The design and location of

all such items shall be submitted for approval to Declarant or the Board. Failure to obtain prior approval may result in removal of any such improvements, and the cost thereof assessed against the Owner of that Parcel as a Specific Assessment.

4.3.8. *Animals.* Only household pets are permitted to be kept on any Parcel, excepting however, that any Parcel which is two (2) acres or larger is permitted to keep horses on such Parcel; provided, all such use shall be in compliance with applicable zoning, land use and other applicable laws or ordinances. No roosters or crowing animals are permitted to be kept on any Parcel. Any other animal, which makes objectionable noise or, in the Board's judgment, constitutes a nuisance or inconvenience to the occupants of other Parcels, shall be removed by the owner upon the Board's request after a notice and opportunity to be heard. If the pet owner fails to honor such request, the Board may remove the pet. Owners of a Parcel allowed to keep horses may use Common Open Space (COS) 1, 2 or 3, as shown on the Plat, for equestrian riding. No equestrian riding is permitted on any road or Common Drive in the Community.

4.3.9. *Water Flow.* Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains is prohibited, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Parcel without the Owner's consent.

4.3.10. *Clotheslines, Window Treatments, Lawn Maintenance, General Upkeep of Parcels, Etc.* No clothesline may be erected or maintained on any Parcel. All stored materials, lawn mowers, tools and similar equipment shall be kept in an enclosed garage, the Dwelling or other approved, enclosed structure. Temporary window treatments (such as towels, bed sheets, etc.) shall not be permitted. Failure to adhere to this Section 4.3.13 may result in removal of such items and the cost associated therewith assessed to the Owner and against the Owner's property as a Specific Assessment until paid, including any fines or penalties that may apply for such violations (which are also assessable as Specific Assessments).

4.3.11. *Walls, Fences and Hedges.* No fence, hedge, wall or rock wall, including any retaining wall, shall be erected, placed or altered within a Parcel without written approval from the Declarant or the Board. All fencing located or installed on the Common Areas are exempt from the fencing requirements provided herein. Declarant, its successors and assigns, and the Association shall have the right to erect chain link fences and any other type of fencing and enclosures within the Common Area to comply with all agreements with (whether of the Declarant or the Association) or statutes, ordinances, rules or regulations of Burke County (or agency thereof), and/or the State of North Carolina (or any agency thereof).

4.3.12. *Landscaping.* Owners must do a reasonable amount of landscaping. The reasonableness of the amount of landscaping done is to be determined by the Association. Each Parcel shall be maintained in a neat and attractive condition including but not limited to mowing and/or weed eating so as not to become an eyesore to adjoining Parcels.

4.3.13. *Cutting of Trees.* Owners shall make every effort to maintain as much of the natural tree canopy as possible. Cutting for views must be approved by the Declarant, ARC or the Association and Owners shall only remove twenty-five (25%) of the trees on their Parcel without the prior written consent of the Association. Furthermore, no tree with a diameter of eight (8) inches

or larger may be removed without the consent of the ARC or the Association. All trees that have been cut must be entirely removed from the property immediately. Owners of individual Parcels which are five (5) acres or larger are permitted to cut trees to clear for pasture; provided, each such Owner shall not cut trees within fifty (50) feet of the property line abutting any other Parcel.

4.3.14. *Advertising.* No advertising shall be allowed on any Parcel, except if a Parcel is for sale, then it may be advertised as such. No for sale signs may be placed on a Parcel until the expiration of the Declarant Control Period or until such time as Declarant turns over control of the Association, or three (3) years from the recording of this Declaration, whichever is earliest. Additionally, no for sale signs shall be placed upon a Parcel within thirty (30) days of its closing. No Owner or contractor or vendor performing work on any Parcel shall place any signage advertising for such contractor or vendor in any location other than on such Parcel and any signage placed in the Common Areas or otherwise in violation of this Section 4.3.14 may be removed by the Declarant or the Association.

4.3.15. *Residential Use.* No primary Dwelling or detached building may be used as a school, church, kindergarten, or business/commercial enterprise of any type and no such activity shall take place on any Parcel temporarily or permanently. No accumulation of discarded personal effects, debris, waste or garbage shall be permitted on any Parcel at any time. The foregoing notwithstanding, home schooling of immediate family members by an Owner on its Parcel shall be allowed hereunder.

4.3.16. *Leasing.* Leasing of primary Dwellings or detached buildings is allowed by any Owner who is in good standing with the Association, who is not delinquent in the payment of Assessments and is not in violation of any of the covenants, conditions or restrictions imposed by this Declaration as of the date of the lease. The Owner must provide the tenant copies of this Declaration, the Bylaws or any rules and regulations promulgated thereto. The Owner and each tenant or occupant shall comply with all provisions of this Declaration, the Bylaws or any rules and regulations of Lakeside Reserve. The Owner and tenant are responsible for violations of any occupants and guests of the primary Dwelling or detached building; notwithstanding the fact that such occupants are fully liable and may be sanctioned for any such violation.

4.3.17. *Parking.*

Vehicles shall only be parked in garages, driveways located on Parcels, designated parking spaces, or other areas authorized in writing by the Board. Vehicles may not be parked on any grass or landscaped areas on Parcels.

Disabled and stored vehicles are prohibited from being parked in the Community, except in garages. For purposes of this subparagraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains in the Community, other than in a garage, for fourteen (14) consecutive days or longer without the prior written consent of the Board.

Boats, jet-skis, all trailers, buses, taxis, hearses, limousines, recreational vehicles, motor homes, campers, panel trucks, trucks with a cargo-load capacity of one (1) ton or more, full-size vans (excluding vans used by handicapped persons, mini-vans or sport utility

vehicles used as passenger vehicles and receiving a “car” or “passenger vehicle” classification by the North Carolina Department of Motor Vehicles), vehicles containing visible evidence of commercial use (such as tool racks, ladders, ladder racks or tow winches), and vehicles with commercial writings on their exteriors (except for law enforcement vehicles marked as such) are also prohibited from being parked in the Community, except: (1) in garages or as otherwise approved by the Board, (2) in the case of service vehicles, on a temporary basis during daytime business hours or during emergencies for the purpose of serving a Parcel, (3) in the driveway on a temporary basis not to exceed fourteen (14) days in a fiscal year, or (4) behind the dwelling, only if such location does not allow the vehicle to be visible from the road or other Parcels. The Board may establish additional rules regarding vehicles and parking in the Community, which may include restrictions on the number of vehicles which may be parked in the Community.

If any vehicle is parked in the Community in violation of this Paragraph or the Association’s rules, the Board or agent of the Association may tow or boot the vehicle after twenty-four (24) hours written notice. Such notice shall: (1) be placed on the vehicle; (2) specify the nature of the violation; (3) warn of possible towing or booting; and (4) state the name and telephone number of a person to contact regarding the violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed or booted in accordance with the original notice and without further notice. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner’s or occupant’s Parcel or dwelling, is obstructing the flow of traffic, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

The Association has no liability for any towing or booting in accordance with this subparagraph. Each Owner and occupant hereby releases and holds harmless the Association, its Directors, Officers, agents and representatives, for any claim or damage from any such towing or booting. The Association’s rights to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines.

4.3.18. *Camping.* Camping shall be permitted on any one (1) Parcel, which is not less than three (3) acres in size, for a period of seven (7) days or less, during any consecutive thirty (30) day, time period.

4.3.19. *Activities Affecting Insurance.* No Owner shall do or permit anything to be done or kept within the Community or fail to fulfill an obligation which will or does result in the cancellation of or increase in the cost of any insurance carried by the Association, or which would be in violation of any law or the Governing Documents. Should an Owner engage in such activity or omission, such Owner shall be responsible for and may be assessed as a Specific Assessment in the amount of any increase in the Association’s insurance premiums caused by that Owner’s activities or omissions; should more than one Owner engage in such activities or omissions, each Owner shall be jointly and severally liable for any increase in insurance premiums. In addition, any cancellation of insurance caused by any Owner’s activities or omissions shall result in a Specific Assessment of any actual loss to the Association by virtue of such cancellation, and when such loss is incurred by the action or omission of more than one Owner, such Owners shall be jointly and

severally liable for same. No waste shall be committed on the Common Area, except as may be necessary to enable the Declarant, the Association or other Person to exercise any rights reserved to them hereunder, or except as may be necessary to enable the Association to perform its functions and provide services under this Declaration, or except as may be reasonably necessary in connection with the exercise by the County or City, as applicable, or any Person of an easement over, under or through the Common Area.

4.3.20. *Local Law.* Owners shall comply with all local laws and ordinances applicable to any part or all of the Community, including applicable zoning ordinances and building codes and all rules and regulations regarding the use of Lake Rhodhiss, whether promulgated by Burke County or other governmental entities with the authority to regulate such use.

4.3.21. *Emergency.* There is hereby reserved a general easement to all firemen, ambulance personnel, police and security guards and all similar persons to enter upon the Property or any portion thereof, in the performance of their respective duties.

4.3.22. *Stream Buffer Disturbance.* No stream buffer area, if any, within the Community (whether on a Parcel or on any Common Areas) shall in any manner be disturbed by any Owner (or his lessee, guest, contractor, etc.) and should any such disturbance occur, the disturbing Owner shall cause the disturbed area to be promptly restored to its prior condition to the fullest extent practicable in accordance with all applicable laws, rules and ordinances and such Owner shall bear the sole cost thereof. Should the Association cause such work, or portion thereof, to be performed, the costs thereof shall be assessable against such Owner as a Specific Assessment and there shall be joint and several liability for such costs in the event of more than one violating Owner.

4.3.23. *Motorized Vehicles.* No Owner or Owners of any Parcel shall operate or permit to be operated by those under their control, or by those who ought to be under their control motorcycles, three wheelers, four wheelers, ATV's, off-road vehicles or similar vehicles on the shared road or common space except for legitimate purposes of transportation to and from work into and out of the Community. Golf carts and all-terrain vehicles with side by side seating and headlights and tail lights are permitted on the shared roads of the Community. A permitted vehicles are subject to such rules and regulations as the Declarant and/or the Association may promulgate from time to time. It is the intention of this restriction to prohibit sport riding or joy riding upon motorcycles and similar vehicles within the boundaries of the Community.

4.3.24. *Recreational Vehicles.* Recreational Vehicles shall be permitted on any one (1) Parcel, which is not less than three (3) acres in size, for a period of seven (7) days or less, during any consecutive thirty (30) day time period.

4.3.25. *Golf Carts.* Owners shall be permitted to use golf carts on the Common Drives and Common Area. The use of golf carts shall be restricted to electric and gas golf carts which produce a minimal amount of noise.

4.3.26. *Sediment Control.* Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, straw bale fences, storm-water inlet protection and temporary seeding, to the extent deemed reasonably necessary by Declarant, shall be taken by all Owners to ensure that all sediment resulting from any land disturbance or

construction operation is retained on the Parcel in question. All sediment control measures must be maintained until such Parcel has been permanently stabilized with respect to soil erosion.

4.3.27. *Declarant Exception.* Notwithstanding any other provision of this Declaration or any other Governing Documents, during the Declarant Control Period the restrictions contained in this Article and the Rules or Regulations of the Association with respect to matters addressed in this Article; (i) shall not prohibit or restrict the Declarant from developing any infrastructure (for example, water lines, sanitary sewer lines, streets, street lights and sidewalks) in the Community; and (ii) shall not prohibit or restrict the Declarant (or any builder with the Declarant's consent) from marketing or selling any part or all of the Community.

4.4. Rules and Regulations. In addition to the restrictions stated above, which may be modified or rescinded only by an amendment to this Declaration, use and occupancy of the Parcels and Common Area shall be subject to the Rules and Regulations, which are intended to govern day-to-day use and occupancy of the Parcels and Common Areas. In order to adapt and respond to changing or unforeseen circumstances affecting the Community, the Declarant, the Association and the Owners must have the ability to change the Rules and Regulations in an expedited and inexpensive manner. Accordingly, the Rules and Regulations may be promulgated, amended, supplemented and/or rescinded and restated as set forth in this Section 4.4.

4.4.1. *Declarant's Authority.* During the Declarant Control Period, the Declarant shall have the unilateral right to promulgate, amend, supplement and/or rescind and restate the Rules and Regulations, without prior notice to the Association or to other Owners. In addition, during the Declarant Control Period, the Declarant may alter, amend or modify the Plat as Declarant deems necessary for the development of the Community.

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

4.4.3. *Members' Authority.* Members representing more than Seventy-Five (75%) percent of the total votes in the Association, at an Association meeting duly called for such purpose, may amend, supplement and/or rescind and restate the Rules and Regulations.

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

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

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

4.5.2. *Alienation.* No rule promulgated pursuant to this Section shall prohibit leasing or transfer of any Parcel or require consent of the Association or Board for leasing or transfer of any Parcel; provided, however, that the leasing of a Dwelling on a Parcel shall be subject to the provisions of Section 19.7 hereof and related provisions in the Rules and Regulations, if any. Prior to any transfer or leasing of a Dwelling or Parcel, the Owner shall provide notice to the Declarant of the name and contact information (including mailing address, email address and phone number) of the proposed transferee.

4.5.3. *Abridging existing rights.* No rule shall require an Owner to dispose of personal property that was in or on a Parcel prior to the adoption of such rule and which was in compliance with all provisions of this Declaration and all Rules previously in force. This limitation shall apply only for the duration of such Owner's ownership of the Parcel, and this right shall not run with title to any Parcel. The limitations stated in this subsection shall not apply to amendments to this Declaration.

4.6. Common Area Use. 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.

There shall be no obstruction of the Common Area, nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Association, except as specifically provided herein.

A. The use of the Common Area shall be governed by the Declarant, until such time as the Declarant turns the Common Area over to the Association, after such time the use of the Common Area shall be governed by the Association. The Declarant, while in control of the Common Area, and thereafter the Association, shall have the authority to establish written policies for the use of the Common Area.

B. Anyone who uses a portion of the Common Area hereunder shall assume, on behalf of himself/herself/themselves and his/her/their guests, occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use. Neither the Declarant, nor Board, nor Association shall be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

C. Users of the Common Area must remove all trash immediately. Upon use of the fire pit or grill, the user must clean or remove all debris, ashes, burnt logs, etc. Trash shall not be deposited into the lake.

D. The proposed community dock shall be used on a temporary basis. The Association may create a standard use protocol for the dock, to be implemented and observed by all Owners. Only boats owned by Owners or their overnight guests shall be permitted to use the dock.

E. Declarant may, in its sole discretion, dedicate portions of the Common Areas for use as off-site septic fields to serve certain Lots that do not practically support their own on-sites septic system, and Declarant, during the Declarant Control Period may establish easements over the Common Areas for such purposes as Declarant deems necessary or advisable, in Declarant's sole discretion.

4.7. Parcel Purchasers. All prospective purchasers and Mortgagees are given notice that use of the Parcels and the Common Area is restricted and governed by the Governing Documents, as they may be amended, expanded, and otherwise modified as set forth in each Governing Document. Each Purchaser, by acceptance of a deed, acknowledges and agrees that the use, enjoyment and marketability of his or her Parcel shall be affected by the Governing Documents which may change from time to time, and that the current Rules and Regulations may not be set forth in a Recorded Document. 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.

4.8. Storm-Water Management Improvements. The Association will be responsible for maintenance of any private storm-water management pipes, swales, channels, or the like, within the Common Area. Such maintenance shall include periodic removal of sediment, restabilization of swales and channels as needed, and maintenance of vegetative cover as necessary.

## ARTICLE V.

### Architecture and Landscaping.

5.1 General. No structure or improvement of any sort, including but not limited to homes, walls, fences, additions to homes and/or other items set forth in Section 4.3.1, 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 a written contract with a builder. No such structure or improvement, (including any landscaping, driveways, and tree removal), shall take place on such Lot except pursuant to approval by the ARC and in compliance with this Declaration. The removal of any tree with a diameter of eight (8) inches or more at six (6) feet above ground level shall require ARC approval and other applicable governmental rules, regulations or ordinance relating to the cutting of trees shall be complied with.



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 by the ARC.

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

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

## 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 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, granted with conditions, withheld, or delayed pending receipt of more information in Declarant's or its designee's sole discretion.

Declarant's rights reserved under this Article shall continue during the Declarant Control Period and for so long as Declarant 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 some 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.

Moreover, the Declarant shall have the authority to delegate its reserved rights hereunder to the ARC described below and shall have the authority during the Declarant Control Period, unless otherwise relinquished in a Recorded Document, to appoint all or some members of the ARC in its sole and absolute discretion.

5.2.2 *Architectural Review Committee.* Each Owner, by accepting a deed or other instrument conveying any legal or equitable interest in a Lot, acknowledges that, as the entity charged with protecting the interests of the Community and as an Owner of real estate in the Community, the Association has a substantial interest in the quality and appearance of improvements within the Community. Upon delegation by Declarant or upon expiration of the Declarant Control Period, the Association, acting through an architectural review committee ("ARC") appointed by the Declarant during the Declarant Control Period and thereafter by the Board, shall assume jurisdiction over architectural matters. The ARC shall consist of three natural Persons who shall serve and may be removed and replaced in the Board's discretion. During the Declarant Control Period, the members of the ARC need not be Owners, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, the Board shall establish from time to time. Upon and after the end of the Declarant Control Period, the ARC shall be composed solely of Owners.

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 has prepared a preliminary set of Architectural Guidelines for the Subdivision, which are attached to this Declaration as **Exhibit D**, which are applicable to all Lots and/or other portions of the Property which may contain general provisions applicable to all Lots as well as specific provisions which vary among the Lots according to location, Lot size, use, or other factors. Declarant may, at its sole discretion, prepare additional Architectural Guidelines or may amend and replace the Architectural Guidelines. 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 Burke 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** 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 Reviewer shall maintain a copy of the Architectural Guidelines, if any, as they may exist from time to time, and shall make them available to Owners for inspection and copying upon reasonable notice during the Association's business hours; Reviewer may also make the Architectural Guidelines available to prospective purchasers of Lots.

*5.4.2 Procedures.* 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 Reviewer may require the submission of such additional information as deemed necessary to consider any application.

The Reviewer shall make a determination on each application within thirty (30) days ("Response Period") 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.

If the Reviewer requests further or additional information pursuant to the foregoing paragraph, the running of the Response Period shall be suspended until all of such requested information is received; if there were more than ten days remaining in the Response Period on the date such information was requested, then upon the receipt of all requested information the Response Period shall continue with the same number of days remaining as on the day the information was requested; if there are less than ten (10) days remaining in the Response Period when the information is requested, then the Response Period shall end ten (10) days from that date upon which all information is received.

If Declarant is not the Reviewer, then until expiration of Declarant's rights under this Article, the Reviewer 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 fifteen (15) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant and no such application, regardless of the Reviewer's recommendation or approval, shall be deemed to be approved until the Declarant approves the application in writing, waives its right to do so in writing or fails to exercise its veto power within the fifteen-day (15) time frame. In the event that the Declarant fails to respond in a timely manner or waives its approval

right, 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 5.6 and Declarant has consented to the variance during the existence of Declarant's rights hereunder.

Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service or the date upon which an e-mail or confirmed receipt fax of such response is forwarded to the applicant at the internet address or location provided to the Reviewer by the applicant. 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.

Unless a variance is granted in writing, if construction does not commence on a project for which plans have been approved within six (6) months 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 Owner.

Declarant or the Board may, whether upon recommendation of the ARC or not, 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 Waiver of Future Approval. 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 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.

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, but they do not create any duty to any Owner or other Person. Review and approval of any application pursuant to this Article may be based on any consideration the Reviewer deems appropriate, including 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 Lot 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, presence of rock 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 Declarant, the Board, the ARC, and any members thereof as provided in the Bylaws.

5.8 Construction. All construction activities on any Parcel shall be performed in a good and workmanlike manner using only licensed, insured contractors, subcontractors and suppliers. Declarant, the Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for soil conditions, drainage, presence of rock or other general site work; any defects in plans; 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 construction on or modifications to any Parcel. Each Owner shall promptly repair, or cause to be repaired, any damage to the Common Drives or Common Areas caused by construction activities on its Parcel. In the event any such responsible owner shall fail to make such required repairs within thirty (30) days after notice from the Declarant or the Board, then the Declarant or the Association, make take all steps and expend all amounts reasonably necessary to effect such repairs and all costs incurred shall be charged to the Owner failing to make such repairs as a Special Assessment against such Owner's Parcel. In all matters, the Association shall defend and indemnify Declarant, the Board, and any members thereof as provided in the Bylaws.

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

5.10 Temporary Structures Prohibited. No mobile home, tent (except in connection with permitted camping uses allowed hereunder), modular metal home,

trailer or temporary building of any kind shall be placed on any parcel, either temporarily or permanently, except for the use of a temporary construction shed or trailer during the period of actual construction of any structure on the parcel. Nothing in this paragraph shall be construed to prevent the erection or location of storage sheds, barns, or other permanent covered structures that are not used as a primary residence.

## ARTICLE VI.

### **Maintenance and Repair.**

6.1. Association Responsibility for Common Area Maintenance. The Association shall maintain the following:

- (a) All landscaped rights-of-way and all entry features;
- (b) The Common Drives;
- (c) All Common Areas, and all landscaping, structures and improvements of any nature located thereon, including all “amenities”; and
- (d) All streams and culverts located on the Property which serve as part of any storm-water drainage. In connection therewith, the Associations shall comply with all agreements with (whether of the Declarant or the Association), or statutes, ordinances, rules or regulations of Burke County (or any agency thereof) or the State of North Carolina (or any agency thereof), if any.

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

6.2. Owner’s Responsibility Along Waterfront of Parcel. To the extent not provided by the Association, each Owner shall maintain his Parcel. Each Owner shall maintain all landscaping, paving, structures and improvements of any nature whatsoever located on his Parcel. Each Owner’s maintenance of his Parcel shall include but not be limited to:

- (a) Keeping all areas free and clear of all litter, trash, miscellaneous personal property refuse and wastes;
- (b) Complying with all governmental health and police requirements;
- (c) Maintaining any dock or sea wall along any Waterfront.

6.3. Right to Perform Owner’s Responsibility. If any Owner or occupant of a Parcel 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 addressed 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, or shall be deemed to be delivered on the date personally delivered, or shall be

deemed to be delivered on the date such notice is forwarded to the Person's e-mail address on file with the Association), 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 Parcel in question and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise at any person. Owner(s) of a Parcel on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Association or the Declarant in performing such work computed at the rate of twelve percent (12.00%) per annum from the date(s) such amounts are expended until repaid to 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 expenses (including interest as above provided). In addition, the Declarant or Association may choose to not enter upon the affected Parcel and first choose to retain the services of legal counsel in connection with seeking the compliance of such Owner(s) with his duties and responsibilities hereunder, and such Owner(s) shall reimburse the Association for all costs and expenses of same, plus interest at the foregoing rate, (in addition to any subsequent costs and expenses, plus interest at the foregoing rate, of entering the Parcel and having the care and maintenance performed). If such Owner(s) 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 Parcel of the delinquent Owner(s), the Association may charge a Specific Assessment for such amounts against the Parcel of such Owner(s), and proceed to collect such Specific Assessment as provided in Article IX below.

## ARTICLE VII.

### Insurance.

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

(a) Blanket property insurance for all insurable improvements on the Common Area and the Common Drives 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 and the Common Drive. 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 and the Common Drive. 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 insured, 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 and the Common Drive;

(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 Parcels plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

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

7.2. Premiums. 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. Periodic Review. 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 Burke 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. Deductible Amount and Cost. 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 Parcels as a Specific Assessment pursuant to Article IX below.

7.4.1. 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 Declarant (during the Declarant Control period) and 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.

7.4.2. In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insured for claims arising in connection with the ownership, existence, use or management of the Common 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 thirty (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. While such construction is in progress the Association, for liability purposes, shall ensure in its reasonable discretion that the area is sufficiently cordoned off in a manner that prevents or restricts access or makes access to the affected area difficult by those not engaged in such clearance and restoration.

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 Parcels 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. 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. While such clearance and restoration is in progress the Association, for liability purposes, shall ensure in its reasonable discretion that the area is sufficiently cordoned off in a manner that prevents or restricts access or makes access to the affected area difficult by those not engaged in such clearance and restoration.

**ARTICLE IX.****Association Finances.**9.1. Preparation of Budget.

(a) At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year.

(b) The estimated expenses in each budget shall including, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replace cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

(c) Each budget shall also reflect any surplus or deficit as of the end of the current year, the sources and estimated amounts of funds to cover anticipated expenses, including income expected from sources other than Assessments. Each budget shall also include reserves in an amount sufficient to comply with FHA, FNMA, and FHLMC loan requirements that may exist, from time to time.

9.1.2. Calculation of Base Assessments. The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years, and any income anticipated from sources other than Assessments against the Parcels shall be allocated equally among all Parcels which are subject to Assessment and levied as a Base Assessment. The foregoing notwithstanding, Declarant hereby establishes that the initial Base Assessment against each Parcel shall be \$[[975.00]] per year, subject to annual increases as determined by the Declarant or the Board.

9.1.3. Notice of Budget and Assessment; Ratification.

A. Declarant Control Period. During the Declarant Control Period, the Board shall create a budget for the Association for each fiscal year. Each such budget created by the Board during the Declarant Control Period shall be sent to the Owners within thirty (30) days after preparation and shall thereafter become the budget for the coming fiscal year.

B. After Declarant Control Period. After the expiration of the Declarant Control Period, the Board shall create a budget for each fiscal year, and such budget shall be subject to ratification by the Owners at a meeting. Within thirty (30) days of its adoption of a proposed budget, the Board shall send a summary of the proposed budget to the Owners. The meeting shall be held not less than ten (10) nor more than sixty (60) days from the date of such notice. A quorum need not be present at the meeting and the notice to Owners shall include a statement that the budget may be ratified without a quorum being present. The Common Expense budget shall be ratified unless, at the budget meeting the Owners representing at least eighty percent

(80%) of the total votes in the Association and the Declarant, if any, disapprove the budget.

If any proposed budget is disapproved (if approval is required) or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect, increased by ten percent (10%), shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessments anytime during the year, subject to the same notice requirements and rights to disapprove set forth in subsection 9.1.3 above.

The initial Base Assessment shall be an amount established by the Board.

9.1.4. Association Monies. All monies collected by the Association shall be treated as the separate property of the Association. As monies for any Assessments are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owner.

9.2. Other Authorized Assessments.

9.2.1. Special Assessments. The Association may levy Special Assessments to cover unbudgeted Common Expenses in excess of those budgeted. Any such Special Assessment may be levied against all Owners. 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.

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

A. to compel compliance with the Governing Documents by a particular Owner by imposing a uniform fine not to exceed One Hundred Dollars (\$100.00) per day or such higher amount as may be authorized under the Planned Community Act, which shall be in the nature of and treated for all purposes as a Special Assessment, after notice to such Owner and an opportunity to be heard;

B. to cover the costs, including overhead and administrative costs, of providing services to Parcels 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

C. to cover costs incurred in seeking to have a Parcel brought into compliance with the Governing Documents, including any related administrative and collection costs in addition to reasonable attorney fees, and/or to cover the costs of physically bringing the Parcel into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Parcel, their agents, contractors, employees, licensees, invitees, or guests; provided,

the Board shall give the Parcel 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 9.2.2.

9.3. Authority to Assess Owners: Time of Payment. Declarant hereby establishes and the Association is hereby authorized to levy all Assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Parcel on the first day following the closing on the sale of a Parcel by the Declarant to another Owner. Transfers of Parcels by the Declarant to affiliates of the Declarant shall not trigger the obligation for assessments. In the event Declarant re-acquires a Parcel after selling such parcel, Assessments on such parcel shall toll until such time as the Declarant re-sells such Parcel to a Person other than Declarant. The first annual Assessments levied on each Parcel shall be prorated according to the number of days remaining in the fiscal year at the time Assessments commence on a Parcel.

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 Parcel and impose special requirements for Owners with a history of delinquent payment. Unless the Board provides otherwise, the Base Assessment shall be due and payable in advance on the first day of each fiscal year, or otherwise, in the discretion of the Board.

9.4. Liability for Assessments. Each Assessment levied by the Association, together with interest, late charges, administrative fees and the costs of collection thereof, including reasonable attorney fees and filing fees or other court costs (all of the foregoing costs and fees, excepting assessments, being "Additional Costs"), shall be the joint and several personal obligation of each Owner of a Parcel. 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 and Additional 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, the Association may impose reasonable charges for late payment of Assessments, not to exceed the greater of Twenty Dollars (\$20.00) per month from the date of mailing of the notice or ten percent (10%) of any Assessment installment unpaid, and the Assessment, together with Additional Costs shall constitute a lien on the delinquent Parcel when a Claim of Lien is filed by the Association against the Parcel in the Office of the Clerk of Superior Court of Burke County. The lien may be foreclosed by the Association as provided in the Planned Community Act and other provisions of North Carolina law.

No Owner may exempt himself from liability for Assessments by non-use of Common Area, abandonment of his or her Parcel 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 Parcel shall not affect the Assessment lien, or relieve such Parcel from the lien for any subsequent Assessments. However, the sale or transfer of any Parcel pursuant to foreclosure of a 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; provided, that the personal obligation of the Owner for the payment of Assessments and Additional Costs being foreclosed upon shall continue despite such foreclosure. The subsequent Owner of the foreclosed Parcel shall not be personally liable for Assessments on such Parcel due prior to that Owner's acquisition of title. Such unpaid Assessments shall be deemed to be Common Expenses collectible from Owners of all Parcels subject to Assessment, including the subsequent Owner of the foreclosed Parcel.

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

(a) 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 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; and/or

(b) 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.

9.6. Statement of Account. Upon written request of any Member, Mortgagee, prospective Mortgagee or prospective purchaser of a Parcel, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Parcel, 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 regular mail to the Member's address on file with the Association or at the address provided by such requesting Mortgagee or prospective Mortgagee. 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 as of the date noted on the statement.

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

- (a) all Common Area;
- (b) any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Any Parcel owned by the Declarant until such time as such Parcel has become eligible for assessment under Section 9.1.2 above.

**ARTICLE X.****Declarant Rights.**

10.1. Reasonable Rights To Develop. Declarant and/or its contractors or transferees may construct improvements to or within the Community including to the Parcels. The completion of such construction and the said or other disposal of the Parcels 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, 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 the Community as a residential Community and disposing of the Parcels 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 Parcels;

(d) prevent Declarant from creating and/or constructing certain amenities for the benefit of the Community and creating assessments and/or fee structures, rules and regulations for the use of such amenities; provided, in no event shall Declarant be obligated to create any such amenities;

(e) prevent the Declarant from replatting, reconfiguring, combining or subdividing any Parcel or Parcels owned by Declarant or from creating new Parcels from the Property; or

(f) prevent Declarant from placing and utilizing on Parcels or other property which it owns one or more mobile trailers or temporary structures as sales offices or for construction activities.

10.2. 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.

10.3. Additional Property. During the Declarant Control Period, Declarant shall have the right, at its election without the consent of any Owner, to bring within the scheme of this Declaration and subject to the jurisdiction of the Association any portion of the Additional Property, which Declarant shall elect, by filing a Supplemental Declaration in the Registry. At

such time as any Additional Property is brought within the scheme of this Declaration set forth above, it shall be part of the Property. Nothing contained in this Declaration shall be construed as creating any obligation of Declarant to bring any of the Additional Property under the regime created hereby and Declarant shall have the sole discretion, during the Declarant Control Period to either include or exclude any of the Additional Property in such regime.

10.4. Approve Additional Recorded Documents. During the Declarant Control Period, no person or entity shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Community without 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.

10.5. 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 the Governing Documents. 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. Declarant may, but shall not be obligated to, turn over control of the Association to the Members other than Declarant prior to the end of the Declarant Control Period, and in such event Declarant shall be deemed an Owner with respect to the Lots it then owns or later acquires.

10.6. Exclusive Rights to Use Name of Development. During the Declarant Control Period, no person or entity shall use the name "Lakeside Reserve" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Lakeside Reserve" 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 "Lakeside Reserve" in its name.

10.7. Easement to Inspect and Right to Correct.

10.7.1. *Easement.* During the Declarant Control Period, 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 Parcels and Common Area. Declarant shall have the right to redesign or correct any part of the Community, including Parcels owned by Declarant and Common Areas.

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

10.8. Appointment or Removal of Members of the Board and Officers. Regardless of any other provision of this Declaration, during the Declarant Control Period, Declarant shall



have the sole authority to appoint or elect as well as to remove and replace all members of the Board, all officers of the Association and all members of any Association committees unless Declarant assigns such right to the Membership or Association prior to the termination of the Declarant Control Period.

10.9. Amendment to Declaration by Declarant. Regardless of any other provision of this Declaration, during the Declarant Control Period, Declarant, without obtaining the approval of any Association member, or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provision of this Declaration. Furthermore, at any time during the term of this Declaration, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto: (i) which are correctional in nature and do not involve a change which materially and adversely affects the rights, duties or obligations specified herein and (ii) which are necessary to cause this Declaration or any Annexation or Supplemental Declaration to comply with the requirements of FHA, VA, Fannie Mae, or other governmental agency.

## ARTICLE XI.

### Easements

#### 11.1. General Provisions.

11.1.1. *Owners' Easements of Enjoyment.* Except as limited by this Declaration, the Planned Community Act or by action of the Board in enacting a suspension, every Owner shall have a right of use and enjoyment in and to the Common Drives and Common Area which shall be appurtenant to and shall pass with, the title to every Parcel. Each Parcel shall be subject to the right of other owners to the use and enjoyment of the Common Drives to the extent that the Common Drives cross any Parcel and Declarant hereby establishes a perpetual, non-exclusive easement, for pedestrian and vehicular ingress and egress over each Parcel, for the benefit of the other Parcels, for the use of the Common Drives. 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. Such delegation right may be eliminated when the delegating Owner's rights to use and enjoyment of the Common Area have been suspended.

11.1.2. *Walks, Parking Areas, and Utilities.* All areas of the Community shall be subject to such easements for private walkways, parking areas, water lines, sanitary sewers, storm drainage facilities and for the maintenance of and general access to all storm water 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 shown on a recorded map of the Community, 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. Additionally, Declarant, during the

Declarant Control Period, or the Association thereafter, may create the easements for septic fields in portions of the Common Areas as described in Section 4.6 above.

11.1.3. *Declarant's Easement to Correct Drainage.* During the Declarant Control Period and for the benefit of the Association thereafter, the Declarant reserves a blanket easement and right-of-way on, over, and under the ground within the Community 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 grading of the soil or take any other similar action reasonably necessary. After such action has been completed, the Declarant or Association, as applicable, shall restore the affected Property to its original condition to the extent practicable. Declarant or Association, as applicable, shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Declarant or Association, as applicable.

11.1.4. *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 for the Community, over the 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, the right to grade the land under and around such entry features and the right to take action necessary to maintain any entrance sign or monument.

11.1.5. *Fence Easement.* There is hereby reserved to Declarant and the Association an easement across any Parcel 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; governmental regulation, rule, ordinance, or plan approval requirement; or which is deemed to be in the best interests of the Community by the Association.

11.1.6. *Easement to Government.* 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.

11.2. Restrictions on Improvements or Interference with Easements. No improvement shall be built in such a way upon any Parcel, and no other action shall be taken by any Owner, which in any way restricts or limits the easement rights granted and reserved herein. No Owner shall have any right to remove, destroy, damage or impede any improvement placed in any valid easement.

## ARTICLE XII.

### Storm-Water

12.1. Storm-Water Control Facilities. Applicable laws and ordinances (the "Ordinances") require that storm-water runoff from the Property be controlled and pollutant loading from storm-water runoff from the Property be reduced. To comply with the Ordinances,

Storm-Water Control Facilities will be installed by the Declarant and maintained by the Association as Common Area in strict compliance with the Ordinances. To the extent that the Storm-Water Control Facilities have not been accepted for public maintenance, the expenses for maintenance of Storm-Water Control Facilities paid by the Association shall be Common Expenses.

12.2. Drainage Easement. The Declarant dedicates, establishes and declares to and for the benefit of each Parcel, the Common Area and each Owner hereof:

(a) a perpetual, irrevocable and non-exclusive easement, right and privilege to discharge and store surface water drainage from such Parcel or Common Area into the Storm-Water Control Facilities situated in private drainage easements that serve the Property, whether located on or off the Property, and

(b) a perpetual irrevocable and non-exclusive easement, right and privilege to use and maintain Storm-Water Control Facilities, including the right of access to and from the private drainage easements and other portions of the Property as reasonably necessary to maintain the Storm-Water Control Facilities.

### **ARTICLE XIII.**

#### **Mortgagee Provisions.**

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

13.1. 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 Parcel 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 Parcel 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 Parcel 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 Parcel 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.

13.2. 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 Parcel in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

13.3. 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 Parcel.

13.4. 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.

#### ARTICLE XIV.

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

The Board may impose fines on an Owner as a Specific Assessment 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 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. The provisions of this Article shall not be applicable to Declarant.

#### ARTICLE XV.

##### **Miscellaneous.**

15.1. Parties Bound. All persons and entities acquiring any interest in any of the Parcels, 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 Parcels, shall likewise be bound.

15.2. 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.

15.3. Amendment. After the expiration of the Declarant Control Period, 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 Parcels, cast in person or by proxy at a meeting held in accordance with the Bylaws of the Association. Any amendment must be recorded in the Burke County Public Registry to be effective. During the

Declarant Control Period, this Declaration may only be amended with the consent of the Declarant.

15.4. Enforcement. Subject to the provisions of Article XVI above and in addition to the powers granted to the Board or Declarant under Section 4.3.1(E) 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 XVI above, the Declarant, the Association or any Parcel 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 and costs incurred in bringing and prosecuting such action from the breaching or violating Owner(s), in addition to recovering any pre-action fees and costs pursuant to this Declaration. All of the foregoing attorney fees, costs and other fees and costs associated with enforcing this Declaration or the other Governing Documents shall be assessable as a Specific Assessment hereunder.

15.5. 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.

15.6. 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 memorialized by a Recorded Document executed by the Declarant, a copy of which shall be promptly provided to 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.

15.7. Sale or Lease. In the event an Owner sells or leases such Owner's Parcel, the Owner shall give to the Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Parcel and such other information as the Association may reasonably require. Upon acquisition of a Parcel, each new Owner or Lessee shall give the Association, in writing, the name and mailing address of the Owner or Lessee and such other information as the board may reasonably request. Provided, however, that no Dwelling shall be occupied by a Tenant but pursuant to a written Lease, a copy of which has been approved by the Declarant or the Board. Any such Lease shall include provisions requiring the Tenant to abide and be bound by the Governing Documents, and the Owner shall not be relieved of such Owner's responsibilities under the governing documents. No Dwelling shall be leased for a term of less than four (4) days. The Board may adopt Rules and Regulations further regulating the leasing of Parcels. Any Owner that desires to rent its Dwelling shall comply with Section 5.4 of the Buke County Zoning Ordinance requiring a rental license and shall otherwise comply with all applicable state, federal and local laws governing the rental of real property.

15.8. 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 and would not be inconsistent with the Declarant or Association's duties to the Community and the Association.

15.9. 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.

15.10. 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.

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

15.12. 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.

15.13. Wetlands; Governmental Regulations Generally. Portions of the Lots may contain areas that are designated as wetlands or may contain streams or creeks running through a Lot. Each Lot Owner is responsible for complying with all local, State and Federal laws, rules, regulations and ordinances governing any such wetlands or streams, including, without limitation, Title 15A, Subchapter 2 of the North Carolina Administrative Code, and any regulations promulgated by the Army Corps. of Engineers. In addition, nothing contained in this Declaration is intended to attempt to supersede or countermand any laws or regulations (whether local, State or Federal) in effect concerning the use of the Property or any Lot, except where restrictions or rules are placed on an Owner's use that are consistent with, but more restrictive than any applicable laws. Each Owner is responsible for ensuring that her or his use of a Lot and any activities or construction thereon are, at all times, compliant with all applicable laws.”

***[Remainder of Page Intentionally left Blank]***  
***(Signatures on Following Pages)***



**EXHIBIT A****Property Description**

The Property that is hereby subjected to this Declaration is all of the real property located in Burke County, North Carolina and more particularly described as follows:

BEING ALL OF THE REAL PROPERTY, INCLUDING PLATTED LOTS, COMMON OPEN SPACE, COMMON SPACE OR SIMILAR, EQUESTRIAN SPACE AND ALL ROADS, PATHS, DRIVEWAYS AND OTHER ACCESS AREAS LOCATED IN PHASE I OF LAKESIDE RESERVE SUBDIVISION AS SHOWN THAT CERTAIN PLAT THEREOF RECORDED IN PLAT BOOK 59 PAGES 65-72 OF THE BURKE COUNTY REGISTRY.



EXHIBIT A-1

DEPICTION OF PROPERTY

**STATE OF INDIANA**  
COUNTY OF BURDESSA

**PLAT** *LAKESIDE RESERVE*  
TOWNSHIP OF *TRAND*

**PLAT** *LAKESIDE RESERVE*  
OWNER OF RECORD *TRAND TOWNSHIP*

**DEPICTION OF PROPERTY**  
I, *[Signature]*, being the owner of the above described land, do hereby certify that the same is shown on this plat as the same is owned and divided into lots and parcels as shown hereon.

**DEPICTION OF PROPERTY**  
I, *[Signature]*, being the owner of the above described land, do hereby certify that the same is shown on this plat as the same is owned and divided into lots and parcels as shown hereon.

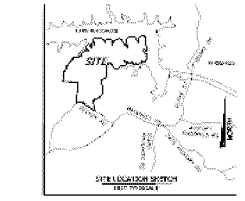
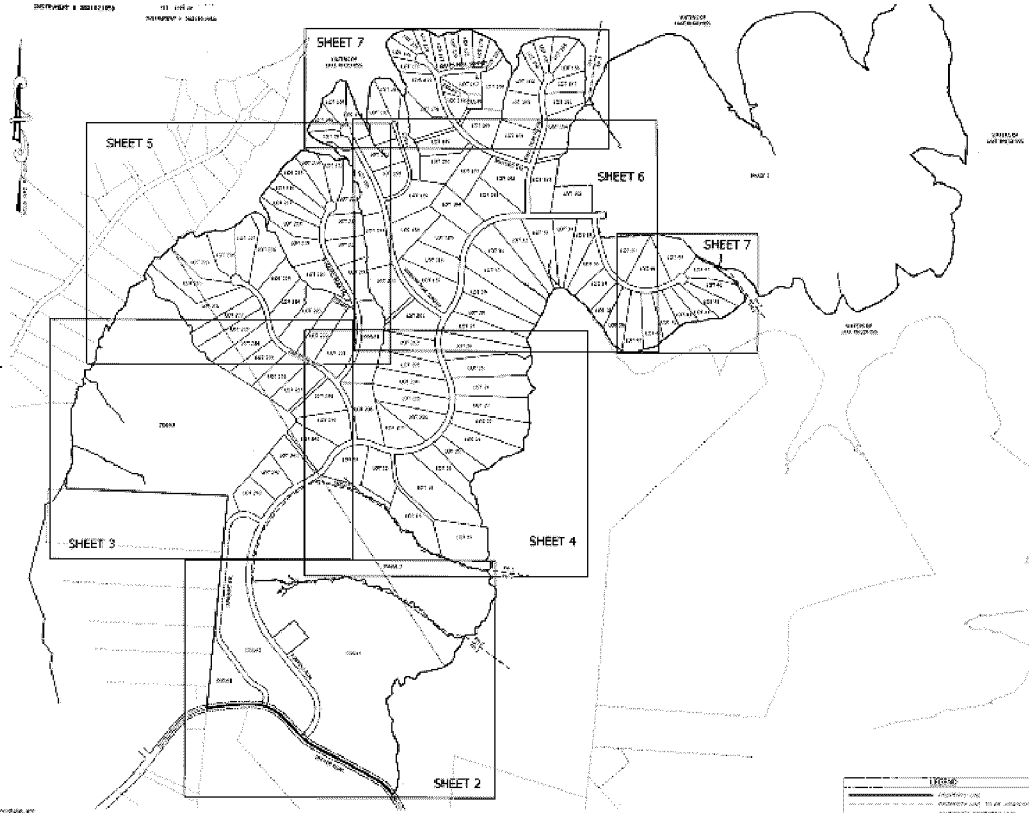
**DEPICTION OF PROPERTY**  
I, *[Signature]*, being the owner of the above described land, do hereby certify that the same is shown on this plat as the same is owned and divided into lots and parcels as shown hereon.

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**OWNER'S REPRESENTATION AND WARRANTY**

I, the undersigned, being the owner of the above described land, do hereby certify that the same is shown on this plat as the same is owned and divided into lots and parcels as shown hereon.

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Final Plat: <b>LAKESIDE RESERVE</b> Cluster Subdivision - Phase 1 Owner of Record: <i>TRAND TOWNSHIP</i> Deed Book 2572 Page 916	
Plat Book 45, Pages 26-33 & Plat Book 48, Page 24 Tax PIN: 1764-93-4531, 2774-16-5168, 8 2774-37-4321	
Trand Township, Burdessa County, IN May 17, 2022 Scale: 1" = 400'	
Sheet 1 of 8	
Drawn by:	Checked by:
1. <i>[Signature]</i>	2. <i>[Signature]</i>
2. <i>[Signature]</i>	3. <i>[Signature]</i>

THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS

**EXHIBIT B****Additional Property Description**

The Additional Property that may be included under this Declaration is all of the real property located in Burke County, North Carolina and more particularly described as follows:

BEING ALL OF THE REAL PROPERTY, DESIGNATED AS PHASE 2 OF LAKESIDE RESERVE SUBDIVISION AS SHOWN THAT CERTAIN PLAT THEREOF RECORDED IN PLAT BOOK 59 PAGES 65-72 OF THE BURKE COUNTY REGISTRY.

THE ADDITIONAL PROPERTY MAY NEVER BE ANNEXED INTO THE COMMUNITY AND DECLARANT SHALL HAVE NO OBLIGATION TO DEVELOP THE ADDITIONAL PROPERTY OR TO IMPROVE THE ADDITIONAL PROPERTY IN ANY WAY.