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Caldwell County, North Carolina  
Wayne L. Rash, Register of Deeds

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR  
THE WATERFRONT CLUB  
A PLANNED COMMUNITY**

**DRAWN BY AND MAIL TO:**

Kent Davis Jones, Esq.  
Redding Jones, PLLC  
2907 Providence Road, Suite A303  
Charlotte, NC 28211



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 The Waterfront Club 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.

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 Caldwell Timber Partners, 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 The Waterfront Club, 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 Caldwell 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 or to be recorded in the Caldwell 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 Caldwell 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 Parcel property abutting Lake Rhodhiss.

### ARTICLE III.

#### The Waterfront Club 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 1,600 square feet of heated floor area for Waterfront lots 1, 10-16, 27-44, 62-76, 89 and 90 and 1,400 square feet of heated floor area for Non-Waterfront water lots 17-26, 45-59 and 61, exclusive of garage, carport, 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 detached building; which shall be not less than 1,000 square feet, and 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.

E. 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 five (5) acres or larger is permitted to keep horses. 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.

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 Caldwell 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 such time as more than ninety-five (95) percent of Parcels have been sold by Declarant, 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.

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.

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 The Waterfront Club. 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 Caldwell 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 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 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. 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.

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 B, 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 Caldwell 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 Caldwell 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 Caldwell 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 \$950.00 per year, subject to annual increases as determined by the Declarant or the Board.

9.1.3. Notice of Budget and Assessment; Ratification of Budget. The Budget is 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 and notice of the meeting to consider ratification of the 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 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 later of: (a) the closing on the sale of a Parcel to a Person other than Declarant, or (b) the issuance of a certificate of occupancy for a residential Dwelling on such Parcel. 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 Caldwell 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;



9.8. Property Subject to Reduced Assessments. Declarant shall be entitled to a ten percent (10%) reduction in all Assessments charged against such Parcels owned by the Declarant.

## 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 "The Waterfront Club" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "The Waterfront Club" 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 "The Waterfront Club" 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 Caldwell 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 ninety (90) days, and a Dwelling owned by an investor shall not be leased for a term of less than one (1) year. For the purposes hereof, an "Investor" is a person who owns, but does not occupy the Dwelling at least sixty (60) days during each calendar year. An Owner may not lease an unimproved Parcel. The Board may adopt Rules and Regulations further regulating the leasing of Parcels.

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. [[Joinder of Declarant's Lenders. ArborOne ACA joins in the execution of this Declaration for the purpose of acknowledging and agreeing that the lien of the Deed of Trust) recorded in Book 1890, Page 1207 in the Caldwell County Public Registry (the "Deed of Trust") is and shall be subject and subordinate to the terms of this Declaration with respect to all portions of the Property subject to such Deed of Trust, such that, upon any foreclosure or deed or other proceeding in lieu of foreclosure of said Deed of Trust, this Declaration shall remain in full force and effect with respect to all such portions of the Property described therein.

***[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 Caldwell County, North Carolina and more particularly described as follows:

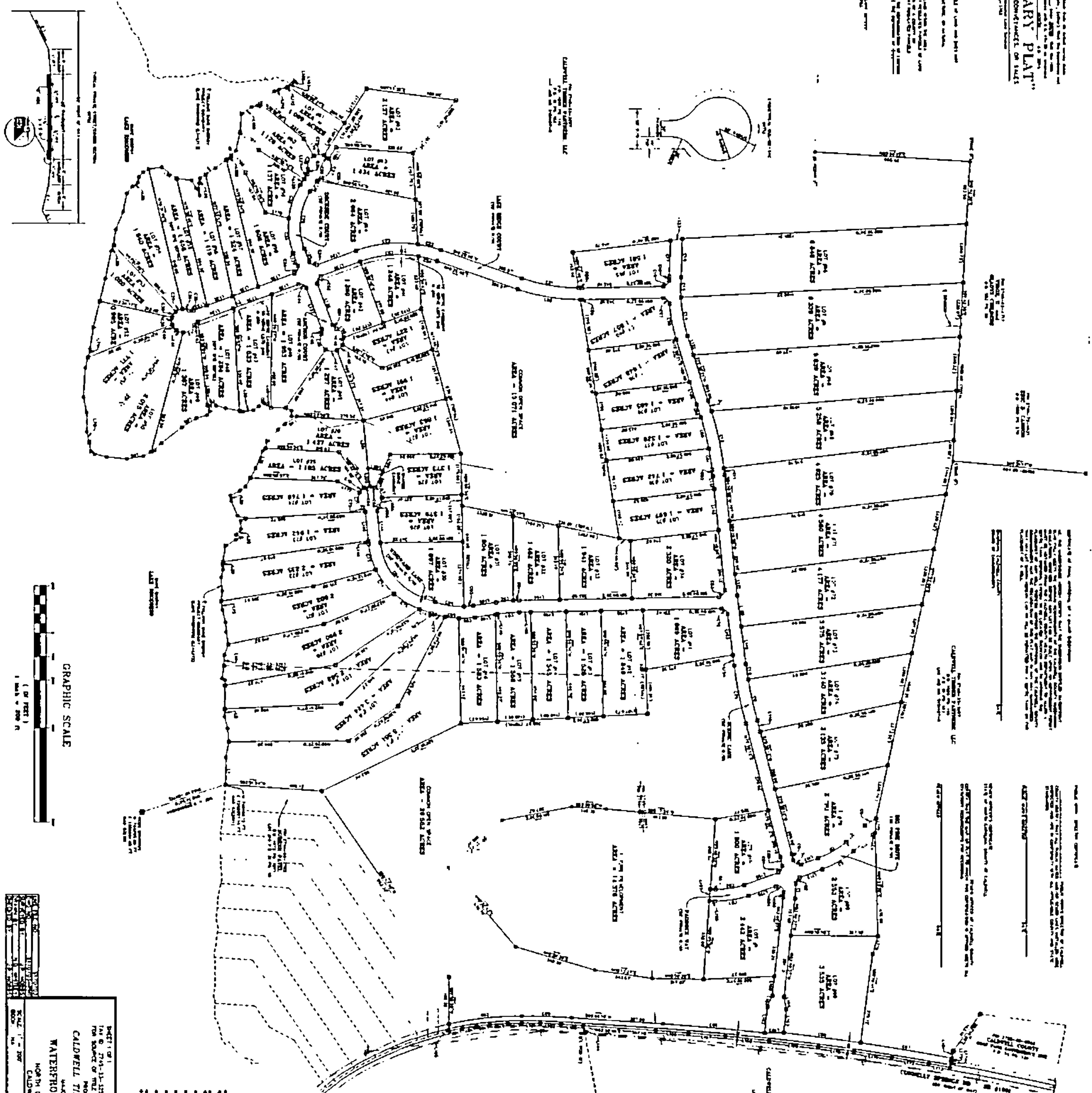
BEING ALL OF THE REAL PROPERTY, INCLUDING PLATTED LOTS, COMMON OPEN SPACE, COMMON SPACE OR SIMILAR, EQUESTRIAN SPACE AND ALL ROADS, PATHS, DRIVEWAYS AND OTHER ACCESS AREAS LOCATED IN PHASE I OF THE WATERFRONT CLUB SUBDIVISION AS SHOWN ON A PLAT THEREOF ATTACHED HERETO A EXHIBIT A-1.

EXHIBIT A-1 - Depiction of Property

THIS 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.

Table with 2 columns: 'Lot' and 'Area'. It lists lot numbers and their corresponding areas in acres, such as 'LOT 1 1.00 ACRES' through 'LOT 100 1.00 ACRES'.

PRELIMINARY PLAT
NOT FOR RECORDING. COMMENTS ON PLAT
This is a preliminary plat of a subdivision of land. It is not 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.



LEGEND
1. All areas shown on this plat are to be used for residential purposes.
2. All areas shown on this plat are to be used for residential purposes.
3. All areas shown on this plat are to be used for residential purposes.
4. All areas shown on this plat are to be used for residential purposes.
5. All areas shown on this plat are to be used for residential purposes.



PROJECT: 17-11-127 & 27-14-123
Caldwell Timber Tract, LLC
WATERFRONT CLUB-PHASE I
NORTH CAROLINA, 28059
Caldwell County, NC
DATE OF SURVEY: June 1, 2015
SURVEY AND MAP PREPARED BY
LAKE NORMAN SURVEYING
& MAPPING PLLC #0-0199
117 Jennings Road, Suite C
Siler City, NC 27578
(704) 878-4450 Fax (704) 878-4451

Table with 2 columns: 'Lot' and 'Area'. It lists lot numbers and their corresponding areas in acres, such as 'LOT 1 1.00 ACRES' through 'LOT 100 1.00 ACRES'.





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

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

All that certain tract of land located in North Catawba Township, Caldwell County, North Carolina, designated as "TOTAL AREA = 967.008 ACRES" on plat recorded in Plat Book 31, Pages 183-187; AND BEING all or a portion of land conveyed to Western Carolina Power Company (presently known as Duke Energy Carolinas, LLC) by deed from R. T. Clagwell, Comm. (thru ex parte petition by Emma Berry, et al.) (R-29), recorded October 13, 1919 in Deed Book 91, Page 450; by deed to Western Carolina Power Company from Lee Bradshaw and wife, Minnie Bradshaw (R.-36), recorded November 21, 1918 in Deed Book 93, Page 266; by deed to Western Carolina Power Company from W. R. Bradshaw and wife (R-37), recorded February 24, 1919 in Deed Book 93, Page 295; by deed to Western Carolina Power Company from Mrs. M. A. Craig (widow) (R-53), recorded January 16, 1919 in Deed Book 93, Page 290; by deed to Western Carolina Power Company from Thomas Crump and wife, Louise Crump (R- 55), recorded December 19, 1918 in Deed Book 93, Page 282; by deed to Western Carolina Power Company from W. Z. Deal and wife, A. L. Deal (R-60), recorded January 4, 1919 in Deed Book 93, Page 288; by deed to Western Carolina Power Company from First National Bank of Lenoir, NC (R-67), recorded November 8, 1918 in Deed Book 93, Page 262; by deed to Western Carolina Power Company from J. W. Hilton and wife, M. J. Hilton (R-85), recorded January 16, 1919 in Deed Book 98, Page 506; by deed to Western Carolina Power Company from J. R. Kaylor and Matilda Kaylor (R-99), recorded December 14, 1918 in Deed Book 93, Page 280; by deed to Western Carolina Power Company from A. N. Lutz and wife, Dosia Lutz (R-101 ), recorded October 28, 1919 in Deed Book 105, Page 32; by deed to Western Carolina Power Company from D. B. Moore and wife, Mary Eller Moore (R-110), recorded September 19, 1918 in Deed Book 93, Page 281; by deed to Western Carolina Power Company from Atlas H. Smith and wife, Edith J. Smith, et al. (R-124), recorded September 11, 1919 in Deed Book 107, Page 307; by deed to Western Carolina Power Company from M. C. Smith and wife, Amanda E. Smith, et al. (R-125), recorded September 14, 1918 in Deed Book 103, Page 122; and by deed to Crescent Land and Timber Corp. (presently known as Crescent Communities, LLC) from Duke Power Company recorded December 22, 1969 in Deed Book 601, Page 169.

LESS AND EXCEPT THE PROPERTY AS DESCRIBED ON EXHIBIT A ATTACHED HERETO.

**EXHIBIT C**

**Bylaws**

**BYLAWS OF**

**THE WATERFRONT CLUB HOMEOWNERS  
ASSOCIATION, INC.**

**BYLAWS OF**  
**THE WATERFRONT CLUB HOMEOWNERS**  
**ASSOCIATION, INC.**

**ARTICLE I**  
**NAME AND LOCATION**

Section 1.01. **Name**. The name of the corporation is The Waterfront Club Homeowners Association, Inc. (the "Association").

Section 1.02. **Location**. The initial principal office and registered office of the Association shall be located at 1031 S. Caldwell Street, Suite 200, Charlotte, Mecklenburg County, North Carolina 28203. The registered office of the Association may be, but need not be, identical with the principal office.

**ARTICLE II**  
**DEFINITIONS**

All capitalized terms when used in these Bylaws, or any amendment to these Bylaws (unless the context shall otherwise require or unless otherwise specified) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for The Waterfront Club entered into by Caldwell Timber Partners, LLC, a Colorado limited liability company ("Declarant"), and duly recorded in the Office of the Register of Deeds for Caldwell County, North Carolina (as amended and/or supplemented from time to time, the "Declaration").

**ARTICLE III**  
**MEETINGS OF MEMBERS**

Section 3.01. **Annual Meetings**. The annual meeting of the Members shall be held each calendar year at a date and time designated by the Board.

Section 3.02. **Special Meetings**. Special meetings of the Members may be called at any time by (a) the President, (b) a majority of the Board or (c) by the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at a proposed special meeting upon the delivery to the Association's Secretary of one or more signed and dated written demands describing the purpose or purposes for which it is to be held. Any such special meeting called by the Members in the manner described in (c) above shall be held within thirty (30) days after the delivery of such written demand by the holders of at least ten percent (10%) of the votes entitled to be cast at such meeting.



Section 3.03. Place of Meetings. All meetings of the Members shall be held at such place, within Mecklenburg County, North Carolina, as shall be determined by the Board.

Section 3.04. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Association's Secretary or other person authorized to call the meeting, by mailing a copy of the notice not less than ten (10) days nor more than sixty (60) days before the date of such meeting to each Member. Each notice of meeting shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.05. Membership in the Association. Each and every Owner of a Lot shall automatically become and be a Member. In addition, for so long as Declarant owns any part of the Property, Declarant shall be Members.

Section 3.06. Voting Rights. Members shall be entitled to one (1) vote for each Lot owned by such Member. When more than one Person owns an interest (other than a leasehold or security interest) in any Lot, all such Persons shall be Members and their voting rights shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. At any meeting of the Members, a representation by any one such Owner that the Owners of the Lot have agreed to a vote shall be conclusive unless another such Owner contests such representation at such meeting prior to the casting of such vote. 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.

Section 3.07. Quorum and Voting. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes entitled to be cast by all classes of the Members shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. During the Declarant Control Period, the Declarant or Declarant's proxy must be present at the meeting for there to be a quorum. If, however, such quorum is not present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3.08. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Association's Secretary. Every proxy shall be revocable, and shall automatically cease upon conveyance of a Member's Lot.

Section 3.09. Action by Members. Except as may be otherwise specifically set forth in the Declaration, the Articles or these Bylaws, the vote of a simple majority of all votes entitled to be cast by those Members present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be the act of the Members. Notwithstanding the above, the affirmative vote of no less than seventy-five percent (75%) of all votes entitled to be cast by all Members shall be required in order for the Association to (a) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Subdivision or any part thereof; or (b) assert a claim against or sue Declarant.

Section 3.10. Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members shall constitute a waiver of notice of the time and place of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Members are present at any meeting of the Members, no notice shall be required and any business may be transacted at such meeting.

Section 3.11. Informal Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

## ARTICLE IV

### BOARD OF DIRECTORS

Section 4.01. Number and Appointment. The business and affairs of the Association shall be managed by a Board of at least three (3) directors (each a "Director"). The number of Directors can be increased by a majority vote of the Association at least 60 days prior to any Election of a Director. The directors need not be Members. Prior to the expiration of the Declarant Control Period, Declarant shall appoint all Directors to the Board. From and after the end of the Declarant Control Period, the Members shall elect all Directors to the Board, as provided by these Bylaws thereafter. Prior to the expiration of the Declarant Control Period, Declarant may relinquish their right to appoint all Directors to the Board, or may instead relinquish its right to appoint one or more, but less than all, of the Directors. In the event of any such partial relinquishment, the Members of the Association shall elect the Directors not appointed by Declarant. At any time after any such partial relinquishment, provided that Declarant still owns any Lot or other portion of the Property, Declarant may reassert its right to appoint Directors previously elected by the Association, and may remove any such previously elected Director or Directors and appoint their replacements to serve their unexpired terms.

Section 4.02. Initial Directors. The initial Directors shall be those persons named in the Articles. Such initial Directors shall serve from the date upon which the Declaration is recorded in the Caldwell County Public Registry, until such time as their successors are duly appointed or elected and qualified.

Section 4.03. Nomination. Subject to Section 4.01, the procedure set forth in this Section shall apply with regard to the nomination of Directors. Nominations for election to the Board may be made by a Nominating Committee appointed to the Board. Nominations may also be made from the floor at any annual meeting. The Nominating Committee, if appointed, shall consist of a Chairman, who shall be a Member or a member of the Board, and two (2) or more Members. The Nominating Committee may be appointed by the Board prior to the annual meeting following the first election of Directors and each annual meeting of the Members thereafter, to serve from the close of such annual meeting until the close of the next annual meeting. The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Prior to the relinquishment by Declarant of their right to

appoint members of the Board, Declarant may appoint a Nominating Committee at its discretion to nominate Members for election to the Board for those positions on the Board, if any, to be filled by election of Members.

Section 4.04. Election. Except as provided in Section 4.01, Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles, these Bylaws and the Declaration. Cumulative voting is not permitted.

Section 4.05. Term of Office. Each Director shall hold office for the term for which he was appointed or elected, or until his death, resignation, retirement, removal, disqualification, or until his successor is appointed or elected and qualified. Subject to Section 4.01, at the first election of Directors, the Members shall elect two (2) members of the Board for a term of two (2) years, who shall be the persons receiving the first and second largest number of votes, and one (1) member of the Board for a term of one (1) year, who shall be the person receiving the third largest number of votes. At all annual elections thereafter but subject to Section 4.01, Director(s) shall be elected by the Members to succeed the Director(s) whose term(s) then expire(s), and thereafter each Director's term shall be two (2) years. Nothing herein contained shall be construed to prevent the election of a Director to succeed himself. Votes shall be tallied at the meeting where they are so cast and, in the event of a tie vote, a run-off election shall be conducted at the same meeting.

Section 4.06. Removal. Subject to Section 4.01, any Director may be removed from the Board, with or without cause, by a majority vote of the Members. In the event of the death, resignation or removal of a Director, his successor shall be selected by the remaining Directors and shall serve for the unexpired term of his predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the Directors or, if applicable, not appointed by Declarant.

Section 4.07. Compensation. No Director shall receive compensation for any service he or she may render to the Association; however, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

## ARTICLE V

### MEETINGS OF DIRECTORS

Section 5.01. Regular Meetings. Meetings of the Board shall be held on a regular basis as often as the Board sees fit on such days and at such place and hour as may be fixed from time to time by resolution of the Board. If any meeting falls upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 5.02. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days notice to each Director.



Section 5.03. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 5.04. Informal Action by Directors. Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to such action is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.05. Chairman. A Chairman of the Board shall be elected by the Directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board and serve until a new President is elected.

Section 5.06. Participation by Conference Telephone. Any one or more Directors may participate in a meeting of the Board by means of a conference telephone or similar communications device that allows all Directors participating in the meeting to simultaneously hear each other during the meeting, and such participation in a meeting shall be deemed presence in person at such meeting.

## ARTICLE VI

### POWERS OF THE BOARD

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

Section 6.01. Rules and Regulations. To make reasonable rules and regulations for the use and operation of the Common Elements, Located Easements, and the conduct of Owners and other Persons occupying or otherwise located on the Property; and to establish procedures for the violation of such rules and regulations; and to amend such rules, regulations and procedures from time to time;

Section 6.02. Agreements. To enter into the following agreements (including acceptance of assignment and assumption of agreements originally entered into by Declarant):

- (a) Agreements with the appropriate governmental authorities to enable the Association to improve and maintain the Common Elements and Located Easements or portions thereof,
- (b) Agreements with insurance companies with respect to insurance coverage relating to the Common Elements and Located Easements and/or the Association;
- (c) Agreements with utility companies with respect to utility installation, consumption and service matters relating to the Common Elements and Located Easements and/or the Association;
- (d) Agreements to maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- (e) Agreements with any third party or any Member (including, without limitation,

Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms of the Declaration and these Bylaws, upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association;

Section 6.03. Borrowing Funds. Subject to the affirmative vote of no less than a majority of all votes present, in person or by proxy, at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws, to borrow funds to pay costs of operation of the Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Members see fit; provided; however, until such time as Declarant no longer own any portion of the Property, the Board may not mortgage any portion of the Common Elements without the prior written approval of Declarant;

Section 6.04. Legal Action. To the extent permitted in the Declaration and these Bylaws, to sue or defend in any court of law in behalf of the Association;

Section 6.05. Assessments. To levy Assessments in accordance with the provisions of the Declaration;

Section 6.06. Insurance Matters. To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property of the Association and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;

Section 6.07. General Exercise of Powers. To exercise for the Association all powers, duties and authority vested in or delegated by the Declaration, these Bylaws, or the Articles to the Association and not reserved to the Members or Declarant by other provisions of the Declaration, these Bylaws or the Articles;

Section 6.08. Vacancy on Board. To declare the office of a member of the Board to be vacant in the event such member shall be absent, without the consent of the Board, from three (3) consecutive regular meetings of the Board;

Section 6.09. Property Management. To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;

Section 6.10. Professional Services. To retain the services of legal, accounting and other professional firms;

Section 6.11. Bonding. To cause all officers or employees having fiscal responsibilities to be bonded, as and if the Board may deem appropriate;

Section 6.12. Enforcement. To the extent permitted in the Declaration and these Bylaws, to enforce the provisions of the Declaration and any rules made thereunder or hereunder and to enjoin and/or, at its discretion, seek damages or other relief for violation of such provisions or rules and/or by Individual Assessments against any Owner for violation of such provisions or rules pursuant to the provisions of the Declaration;

Section 6.13. Easements. To grant all necessary easements, licenses, and rights-of-way over and across the Common Elements when in its sole discretion it deems such an action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sewerage and other utilities and drainage facilities; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;

Section 6.14. Conveyance of Common Elements. Subject to the requirements of the Act, to convey fee simple title to all or any part of the Common Elements when in its sole discretion it deems such an action to be necessary and appropriate; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not convey any portion of the Common Elements without the prior written approval of Declarant;

Section 6.15. Other. To take any and all other actions, and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations under the Declaration or these Bylaws or for the operational protection of the Association; and

Notwithstanding anything contained herein to the contrary, none of the above-described rights and powers of the Board shall be obligatory on the part of the Board, and the failure or refusal by the Board to implement any such rights and powers shall not constitute a breach or default by the Board of any duties or obligations arising hereunder or otherwise owing to the Members.

## ARTICLE VII

### OFFICERS AND THEIR DUTIES

Section 7.01. Officers. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, and such other officers as the Board may create by resolution from time to time.

Section 7.02. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

Section 7.03. Term. Each officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his or her death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 7.04. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may determine from time to time.

Section 7.05. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or



at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.06. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7.07. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 7.04.

Section 7.08. Compensation. No officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the performance of his or her duties.

Section 7.09. Duties. The duties of the officers, unless otherwise stated by a resolution of the Board, are as follows:

(a) **President:** The President shall be the chief executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall perform the following duties (i) preside at all meetings of the Board; (ii) see that orders and resolutions of the Board are carried out; (iii) sign leases, mortgages, deeds, and other written instruments; and all promissory notes, if any;

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

(c) **Secretary:** The Secretary shall perform the following duties: (i) record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; (ii) keep the corporate seal, if any, of the Association and affix it on all papers requiring said seal; (iii) serve notice of meetings of the Board and of the Members; (iv) keep appropriate current records showing the members of the Association together with their addresses; and (v) perform such other duties as required by the Board; and

(d) **Treasurer:** The Treasurer shall perform the following duties to the extent they are not delegated to a managing agent: (i) receive and deposit in appropriate bank accounts all monies of the Association; (ii) disburse such funds as directed by resolution of the Board; (iii) sign all checks and promissory notes of the Association; (iv) keep proper books of account; and (v) prepare an annual report to be presented to the Members at the Members' annual meeting, and deliver a copy of such report to the Members.

## ARTICLE VIII

### COMMITTEES

Subject to Section 4.01 the Board may appoint a Nominating Committee as provided in Section 4.03. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

### **ARTICLE IX**

#### **BOOKS AND RECORDS**

The books, records and papers of the Association shall be subject to inspection by any Member or Mortgagee, at the principal office of the Association. In addition, the Declaration, the Articles and the Bylaws shall be available for inspection by any Member or Mortgagee at the principal office of the Association, where copies may be purchased at reasonable cost. The Board may create reasonable rules and regulations concerning the method by which notice of a request to inspect and/or copy shall be given, the days and hours during which documents may be inspected and/or copied, and the fees associated with copies.

### **ARTICLE X**

#### **ASSESSMENTS**

As described more particularly in the Declaration, each Member is obligated to pay Assessments established by the Association. Any Assessments which are not paid when due shall be delinquent. If an Assessment is delinquent, as more particularly described in the Declaration, the Assessment shall bear interest from the due date until the date such Assessment and interest thereon is paid at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same or foreclose the lien against the portions of the Property and Improvements thereon owned by the defaulting Owner as of the Assessment due date. Additionally, the late charges, costs of collection and reasonable attorneys' fees related to any such action or foreclosure shall be added to the amount of such Assessment, all as more particularly described in the Declaration. No Owner may exempt himself or herself from liability for Assessments or waive or otherwise escape liability from the Assessments by non-use of the Common Elements or abandonment of his or her property.

### **ARTICLE XI**

#### **CORPORATE SEAL**

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

### **ARTICLE XII**

#### **AMENDMENTS**

Section 12.01. Amendment by Members. Subject to the limitations hereinafter contained, the Articles and the Bylaws may be amended or modified at any time by a vote of no less than fifty-one percent (51%) of all votes entitled to be cast by the Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws. Provided, however, if fifty-one percent (51%) of all votes entitled to be cast by the Members is not obtained at

such a meeting, then the Articles and these Bylaws may be amended by obtaining the vote of fifty-one percent (51%) of all votes present at such a meeting and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Members holding a sufficient number of votes to comprise, along with such voting Members, a total of fifty-one percent (51%) of all votes entitled to be cast by Members. Further provided, that (i) any amendment or modification of the second sentence of Section 3.10 shall require the affirmative vote of no less than seventy-five (75%) of all votes entitled to be cast by Members, and (ii) any amendment or modification to the Articles and these Bylaws must be consented to by Declarant during the Declarant Control Period, which consent Declarant may grant or withhold in their sole discretion.

Section 12.02. Amendment by Declarant. Declarant, without obtaining the approval of any other Member, may make amendments or modifications to the Articles and these Bylaws which: (a) are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified in the Articles or these Bylaws; (b) apply only to the portions of the Property then owned by Declarant; (c) are necessary to bring these Bylaws into compliance with any applicable statute, rule, regulation, ordinance or judicial determination; or (d) are necessary to enable any title insurance company to issue title coverage on the Property, or any institutional or governmental lender to make or insure loans on the Property.

Section 12.03. Effectiveness. Any amendment or modification effected pursuant to this Article XII shall become effective with respect to these Bylaws when an instrument is filed of record in the Public Registry; provided, however, such an amendment or modification, in lieu of being executed by the Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Members, as provided in this Article XII. Any amendment or modification of the Articles effected pursuant to this Article XII shall become effective when an amendment or modification is filed of record in the Office of the North Carolina Secretary of State of North Carolina.

### **ARTICLE XIII**

#### **MISCELLANEOUS**

Section 13.01. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 13.02. Controlling Authority. In the case of any conflict between the Articles and the Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and the Bylaws or the Articles, the Declaration shall control.

### **ARTICLE XIV**

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



**Section 14.01. Limitation on Liability.** Neither Declarant, nor any Member, nor the Board, nor the Association, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, Improvements or portions thereof or for failure to repair or maintain the same. Neither Declarant, the Association nor any other Person making repairs or maintenance shall be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, Improvements or portions thereof.

**Section 14.02. Indemnification.** The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

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

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

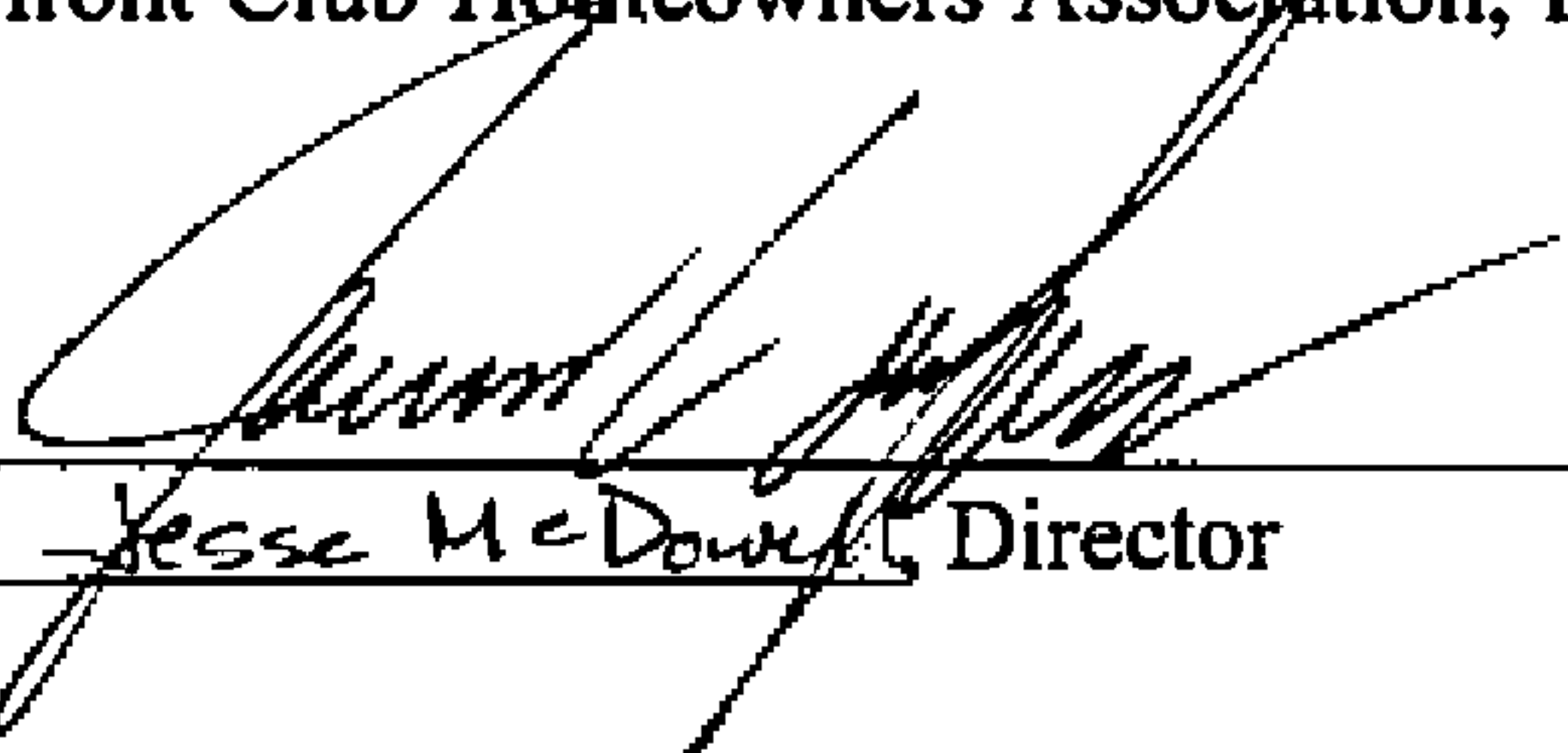
**Section 14.03. Insurance.** The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

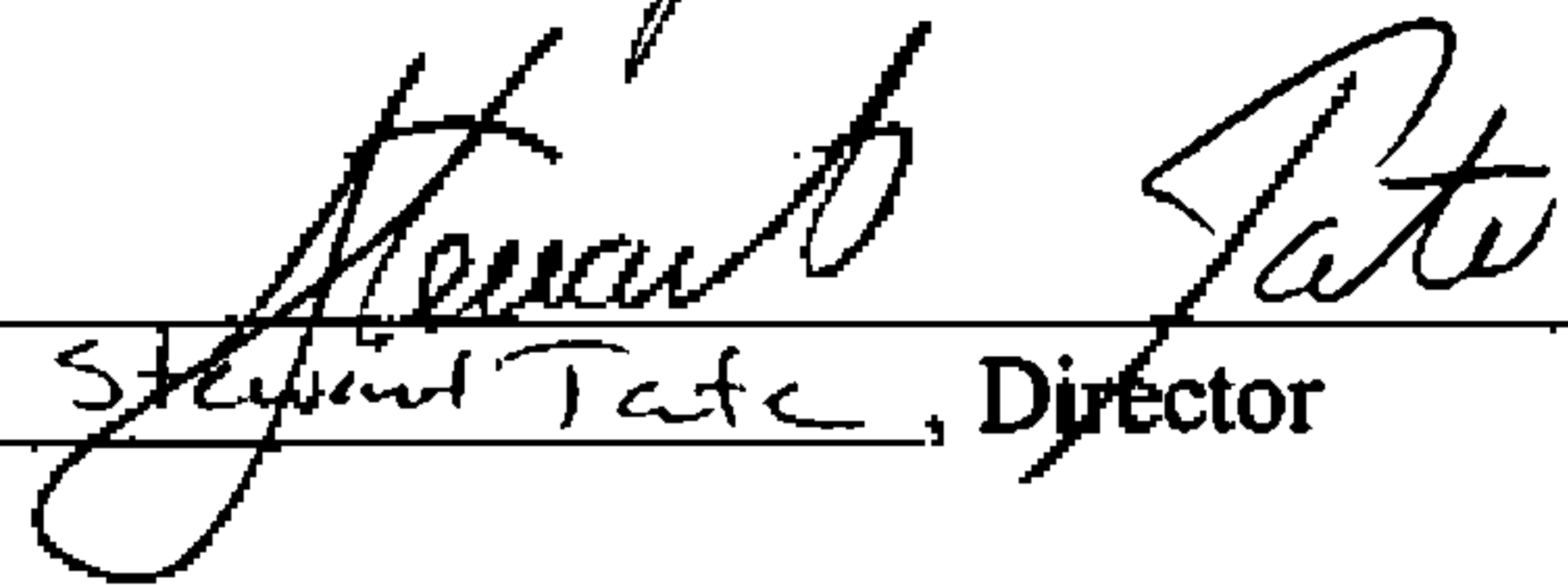
**Section 14.04. Limitations on Indemnification.** The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of the Association, or is or was serving at the

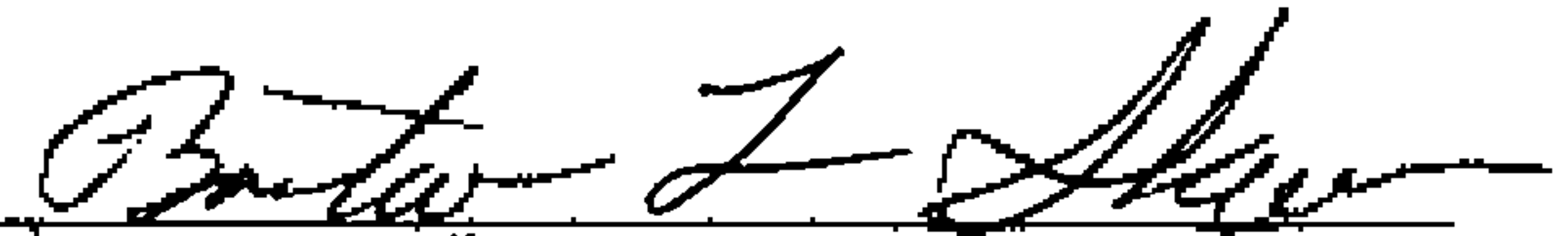
request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf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

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

Adopted by the undersigned Directors of The Waterfront Club Homeowners Association, Inc. as of this 14<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
Jesse McDowell, Director

  
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Stewart Tate, Director

  
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Barton L. Shaw, Director



**EXHIBIT D****Architectural Guidelines****WATERFRONT CLUB HOMEOWNER'S ASSOCIATION**  
**ARCHITECTURAL GUIDELINES****I) Purpose**

The goal in creating these Architectural Guidelines ("Guidelines") is twofold; to preserve the land and lake in a manner that will help ensure everyone's enjoyment of all things that Waterfront Club has to offer, and to encourage a diversity of architectural designs while assuring compatibility of architectural styles within the community.

The purpose of the Architectural Review Committee (ARC) is to control the design, locations, construction of all improvement, and the landscaping (regardless of when such improvement are made) for each lot in the Subdivision as outlined in the Declaration of Covenants, Conditions and Restrictions for Waterfront Club to which these Guidelines are attached. The ARC is a sub-committee of the Waterfront Club Homeowner's Association (the "WCHOA") as described in the CCR's. These Guidelines shall be in addition to and not in lieu of any restrictions or conditions imposed by the CCR's.

All improvements must receive written approval from the ARC in advance of construction. Specifically, the ARC is to review, approve, reject, or suggest changes to plans and specifications for improvements and the landscaping of each lot. The ACR will accomplish its purpose by:

- 1) Reviewing construction/improvements plans.
- 2) Providing direction to homeowners, architects, and building contractors during planning or renovating structures on the lots.
- 3) Ensuring all new construction and renovation are compatible with existing architectural styles within the community to include periodic on-site inspection during the on-going project.
- 4) Enforcing WCHOA Covenants and Architectural Guidelines for new constructions, renovations, improvements, and landscaping.

The failure to obtain all the necessary approvals are a violation of the Architectural Guidelines. Any work that is done without written approval may result in fines of up to \$100.00 per day as allowed by the North Carolina Planned Community Act - Chapter 47F.

A copy of these Guidelines can be obtained by a lot owner by request to the following address:

By email request:

By mail:

The foregoing contact information is subject to change upon changes in the control and governance of the ARC. Lot owners will be apprised of any such changes.

**It is mandatory to contact the ARC prior to beginning any construction, improvements, major landscaping, brush hogging, or tree removal.**

Owners considering construction or alteration should consult the provisions of Article V of the Declaration of Covenants, Conditions and Restrictions.

## **II) Guidelines and Standards**

Because each lot in Waterfront Club varies, it is essential that you understand all factors of your property before designing/choosing a plan and attempting to position your home. Paying close attention in the beginning to the following guidelines and standards may save you money and frustration later.

### **1) Lot Guidelines**

- 1.1) No clearing, construction, improvements or major landscaping of any type may commence without prior written approval of the plans by the ARC. Failure to obtain written approval can result in fines and work being undone. This includes the removal of live trees and placement of driveways or walkways. The ARC reserves the right to assess a Surety Deposit fee for any new construction, additions, renovations, tree removal, brush hogging, and clearing. The ARC will make this assessment based on the type of equipment used and the duration and magnitude of work being performed.
- 1.2) It is important that you, your builder, your landscaper, and all other contractors understand the guidelines regarding clearing and tree removal. The removal of any trees greater than eight (8) inches in diameter at six (6) feet above ground level will require prior written approval from the ARC. Failure to obtain written approval is a violation and can result in a \$100.00 fine. The ARC may require that three (3) new trees be replanted for each unauthorized tree removed. A deadline for the replanting of those tree(s) will be provided by the ARC. Failure to meet that deadline can result in a \$100.00 per day fine after the deadline has passed.
- 1.3) Clear cutting healthy trees or stump removal from any lots are not permitted at any time without approval.
- 1.4) Property owners shall promptly remove all dead or fallen trees and debris from vacant lots.
  - Owner may thin and chip trees less than eight (8) inches in diameter without prior written approval from the ARC.
  - Depending of the type and size of equipment to be used, the ARC reserves the right to assess a Surety Deposit/Road Bond.

- Tree management within the 50' setback from the full pond must be in compliance with Duke Energy's ("Duke") Shoreline Management Plan (SMP) and also the ARC Guidelines. (see section II.2.2)
  - Dying trees may be removed with the written recommendation of an arborist.
- 1.5) Any ground surface disturbed during the thinning process must be covered with wood chips, mulch, etc. in order to prevent erosion.
- 1.6) At no time shall a vacant lot be used for dumping purposes (i.e. dirt, trees, building materials, debris, etc.). The property owner will be responsible for the removal of any and all of these materials in a timely manner.
- 1.7) Setback (including roof overhang, patio, or porch.) shall comply with Caldwell County requirements. Lots shall also comply with Duke Shoreline Management 50ft setback requirement from the waterfront. (see II.2.2)
- Off Water lots will have 25 foot setbacks from all lot lines and right-of-ways.
  - Waterfront lots will have 20 foot side setbacks from the lot lines and right-of-ways.
  - Waterfront lots will have setbacks from the water determined by the county zoning ordinance.
  - Waterfront lots will have 25 foot front setbacks from the lot line and right-of-way.

Request for a variance to the ARC Guidelines/decisions can be made directly to the ARC in writing. This includes requesting a setback variance for lots that it can be demonstrated have challenging areas that would require unreasonable costs to build a house.

## **2) Shoreline Guidelines**

- 2.1) Property owners shall comply with the requirements and restrictions for Duke Shoreline Management which monitors shoreline activities. They must also comply with all the requirements set forth in the ARC Guidelines.
- 2.2) The ARC will refer to the Duke Shoreline Management Plan document, which is subject to change. Any activity along the shoreline or lake bottom (i.e. Piers, Rip-Rap, dredging, etc.) must also be submitted in writing and approved by the ARC. Failure to do so will result in a fine. Also, the property owner is required to notify the ARC before the start of construction activity along the shoreline or the lake bottom.
- 2.3) Lot owners shall:
- Obtain a copy of Duke's Shoreline Management Plan (SMP). Section 4 – Private Facilities Program pg. C-46 through 54 addresses docks. Section 8 Vegetation Management Requirements pg. C-81 through 85 addresses lot clearing.
  - Obtain a permit for dock construction, dock renovation, shoreline stabilization, vegetation removal, or dredging.
  - All lot owners shall be responsible for obtaining all required permits for shoreline construction and the ARC requires copies of all the permits received from Duke prior to the commencement of construction.



- Violation of Duke's SMP may result in permanent loss of property owner's Dock Permit.
- All lot owners shall obtain a Caldwell County building permit before constructing a dock.

**Current Point of Contact at Duke:**

Duke SMP (1-800-443-5193)

[www.duke-energy.com/community/lakes/services/cw-shoreline-management-plan](http://www.duke-energy.com/community/lakes/services/cw-shoreline-management-plan)

Please note that the Duke contact information is subject to change at any time and each lot owner shall be responsible for contacting the appropriate party at Duke to ensure compliance.

- 2.4) Property owners shall comply with the Caldwell County Zoning Ordinance. They must also comply with all the requirements set forth in the ARC Guidelines.
- 2.5) The ARC will refer to the Duke's Shoreline Management Plan and Caldwell County Zoning. Caldwell County Zoning defers to NC Division of Water Quality riparian buffer rules for the Catawba river and main-stem lakes, which is subject to change, regarding any work within the 50 ft. buffer from full pond. Any activity within the buffer must also be submitted in writing and approved by the ARC. Failure to do so will result in a fine. Also, the property owner is required to notify the ARC before the start of any activity within the 50 ft. buffer.

### **3) Building Standards**

Building standards are intended to maintain a quality community. If the placement or design of your home or improvement project cannot meet all the building standards, you may request a variance

- 3.1) The exterior of the home should be completed within twelve (12) months of the date of commencement. The ARC must be notified when home construction and required landscaping is completed. The ARC will then conduct a final construction inspection which is required in order to receive a return of the Surety Deposit.
- 3.2) New homes constructed within the community must be stick built only; provided, other construction materials may be used with the approval of the ARC. Manufactured homes (i.e., but not limited to single, double, or triple wide mobile homes, modular, pre-manufactured, or off-site built.) are not allowed within the community. Approved modular only homes such as "Timber Block Homes" may be approved by the ARC subject to conformance with the Guidelines.
- 3.3) Lot owners shall place an erosion control silt fence along the lakeshore setback before construction begins. A silt fence should also be placed along the adjacent property lines to prevent water runoff, mud, and debris from spilling onto lots, creeks.

- 3.4) After lot preparation and prior to beginning construction, the lots must be maintained, a dumpster and a portable toilet, located on the lot is required. The property should be cleared of debris at the end of each day. Debris should not be allowed to “blow” into neighbor’s lots.
- 3.5) Burning of construction debris, including, but not limited to trees, branches, brush and stumps is not permitted at any time.
- 3.6) No building materials are to be unloaded or stored in the road or road right-of-ways.
- 3.7) All homes constructed within the development must be a minimum of 1,600-SF for waterfront lots and 1,400 SF for non-waterfront, heated living areas exclusive of garages deck, porches, unfinished basement, and unfinished bonus rooms.
- 3.8) Maximum height above ground should not exceed 2 ½ stories. The ARC shall have the right to approve the final height of any structure as a part of the review process.
- 3.9) On each Parcel, there may be constructed no more than one 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.
- 3.10) Foundations should be solid brick or stone covered block, stucco or parge coated.
- 3.11) Landscaping must be installed around the foundation of the house. All areas exposed during construction must be covered by grass, mulch or plant material.
- 3.12) Chimneys should be faced with a material to complement the house.
- 3.13) Roofs over the main structure should be at least an 8.5 pitch; minimum 30 yr. architectural shingles required, unless otherwise approved.
- 3.14) Exterior materials shall be submitted to the ARC for approval. The ARC reserves the right to require samples of exterior materials. Vinyl may not be used for the horizontal siding although “Hardy Plank” type siding and vinyl coated aluminum siding used in the soffits of a home may be used subject to ARC approval.
- 3.15) Garages and Driveways:
  - Garage doors must be installed.
  - Driveways must be finished hard surface material consisting of concrete, asphalt, brick or stone, exposed aggregate concrete, or other approved material for any lot over 3 acres.
- 3.16) Decks and porches should be designed to blend with the style and material of the house.

- 3.17) Visible antenna towers are not allowed.
- 3.18) Window air conditioning units for use in newly constructed residential homes are prohibited.
- 3.19) Satellite dishes must be installed in an unobtrusive location, preferable not visible from the lake or right-of-way.
- 3.20) Retaining walls and fences must blend with the style of the house and compliment neighboring properties. Chain link fencing is not allowed
- 3.21) No above ground pools shall be allowed.
- 3.22) Deck and porches, to include steps, must be constructed of material such to blend with the general style of the house.
- 3.23) All lots must be graded as to not divert water both natural and construction related directly onto or towards adjoining properties to result in said properties receiving drainage from the newly graded lots unless the pre-clearing conditions already have a natural flow to said lots, if so the ARC should be notified to verify current lot conditions.
- 3.24) Bay windows shall be carried down to grade or visual support of any cantilevered condition must be expressed. When bay windows are stacked in a two-story configuration, the blank panel between all facets shall be accented.
- 3.25) All exterior downpipes (except copper downpipes) shall blend with the color of the exterior walls of the residence.
- 3.26) All exterior utility service connections must be provided in unobtrusive and inconspicuous locations. All electric meters and main fuse boxes must be positioned away from view. This may be accomplished by providing an enclosed recess in the side of the dwelling or through approved Landscape improvements and/or screening.
- 3.27) Windows shall generally be the same type and style all around the house. Thermal pane windows are preferred, and exterior storm windows generally will not be permitted. Wood windows are preferred; however, vinyl windows will be considered, provided the style and profile are visually similar to wood windows. Unless specifically waived in writing by the ARC, all windows and doors shall have caps or soldier course brick jack arches, wood caps or other approve decorative treatment, and no running bond brick will be permitted over and door or window of any elevation. No window casing, door casing or decorative treatment shall directly abut the surrounding siding materials, or any frieze board and framing shall be used to surround all such casings.
- 3.28) All heating, ventilating, and air conditioning units, utility meters, electric utility transformers boxes, swimming pool pumps equipment, permitted satellite's or



microwave dishes and similar equipment, apparatus and fixtures on each lot, including all refuse containers stored outdoors, must be screened from view from streets and from neighboring lots. Plants used as screening should be maintained by the lot owner so that the equipment, apparatus or fixture being screened is accessible (where ever possible) by service personnel and/or meter readers.

### **III) Architectural Review Approval Process**

The ARC will only address approval requests from property owners in good standing with the WCHOA (i.e., compliance with covenants and assessments). The following are the steps that must be taken before any construction is commenced and after completing new construction at the Waterfront Club Subdivision. Contact the ARC with any questions as needed.

#### **Step 1- Design and Construction Document Approval**

Submit the following to the ARC:

- A complete set of house plans (blue-prints). An electronic copy is preferred. Such plans shall include, at a minimum, the following information:
  - (a) Front, rear and side elevation drawings, showing roof pitch;
  - (b) Depictions of the use of exterior materials on the home;
  - (c) Floor plans with Square foot calculations.
- An overhead site plan detailing the location of the home and the location of items, such as driveway, well pump, septic area, outbuilding, landscaping, lighting, tree removal, etc.
- A complete preliminary design checklist (Form 1).
- A check for \$1,500.00 payable to WCHOA for the Surety Deposit, of which up to \$1,500.00 is refundable upon meeting all ARC requirements, subject to deduction under Step 3 below.
- A second check for \$150.00 (non-refundable) payable to WCHOA for the review and document approval process.

The ARC will notify you via email and/or mail of ARC construction document of approval. Unless earlier approval is given, no work is allowed during the 30-day period that ARC has to review the plans.

The ARC may request additional samples, pictures or drawings for the approval process.

#### **Step 2: Stake out**

Notify the ARC when the lot has been flagged for clearing and the house has been staked on the lot. The area of the parking pad and driveway should also be flagged. Only trees within the flagged areas are approved for removal. The removal of trees outside the flagged areas, without prior approval, is a violation. This violation can result in a fine and require the replacement of the trees removed.

### **Step 3: Notify the ARC upon construction completion**

Property owners must notify the ARC, when construction is complete, this includes all required landscaping. The ARC will conduct a Final Construction Inspection which will review the completed construction and verify pre, during, and post-construction compliance with the design plans submitted and approved, and all Covenants and the architectural requirements. Upon ARC notification to the Board that the final construction is fully compliant, the Board will refund the Surety Deposit/Road Bond, less and deductions required to correct out of compliance issues, site deficiencies or damage to community property. Deficiencies/damages must be corrected within sixty days. The deposit will be withheld until all the work is completed.

### **IV) Construction Rules**

- 1) These construction rules shall apply to all lot owners and their builders, and any reference herein to an owner shall also apply to the owner's builders and subcontractors.
- 2) All construction activities must be conducted, and all deliveries must be made between 7:00am - 8:00pm Monday through Saturday; provided, however, no construction activities shall be conducted, and no deliveries shall be made on July 4<sup>th</sup>, Labor Day, Thanksgiving, Christmas Day and New Year's Day. Any construction activities conducted or access to Waterfront Club other than during the foregoing hours must be scheduled with the ARC at least twenty-four hours in advance and must be approved by the ARC in writing. No loud radios or distracting noised (other than normal construction noise) will be allowed within the community during construction. Use of radios at reasonable sound levels (to be determined by the Board of Directors of the WCHOA at is sole discretion) are acceptable. Radio and stereo speakers shall not be mounted on vehicles outside of homes under construction.
- 3) In order to maintain a neat and orderly appearance at all time throughout Waterfront Club, the following rubbish and debris rules must be strictly followed.
  - At the end of each day on which work occurs on the lot, all lightweight, blow able construction debris, such as roofing paper, insulation bags, foam sheathing, polyethylene, etc., must be placed in a silt fence pen or other approved containment device on the lot.
  - At the end of each Friday, non-blowable construction debris, such as wood scrap, shingles, brick-bands, brick and masonry blocks, must be gathered into a least one but not more than five neat piles.

- Within the last three (3) days of every month, all debris must be taken off the lot and out of Waterfront Club, leaving the pens and lot free of debris.
- 4) Burning and burial of construction debris or vegetation is prohibited.
  - 5) Silt fence and/or other devices for sedimentation control shall be installed where necessary or as directed by the ARC.
  - 6) No construction materials, equipment or debris of any kind may be stored on any street, curb, or on any adjacent lots or otherwise than in the locations approved by the ARC.
  - 7) All vehicles must be parked so as not to impede traffic or damage vegetation. No vehicles (truck, vans, cars, trailers construction equipment, etc.) may be left parked on any streets within Waterfront Club overnight. Construction vehicles may be left on a lot overnight only if additional use of the vehicle will be made within the following three days.

#### **V) Periodic Inspection**

The ARC will periodically conduct community-wide appearance inspection to ensure the properties, existing homes and structure comply with ARC Guidelines. Homeowners receiving notification of non-compliance with ARC requirements have 30 days to correct any deficiencies and to provide evidence of such correction to the ARC. Each lot owner acknowledges that in the event of a failure to comply with the ARC Guidelines, in addition to any remedies described in the CCR's, the WCHOA may seek injunctive relief to enjoin or correct any non-compliance, it being understood that monetary damages may not be an adequate remedy to prevent harm to the community and its other owners. Questions concerning actions to comply with ARC guidance may be directed to the Board of Directors of the WCHOA.