

**Declaration
of
Covenants, Conditions and Restrictions
for
Pondside**

[Marketed as: The Villas at Sun Valley]

Includes By Laws and Articles of Incorporation

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THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PONDSIDE

("Declaration") is made as of the _____ of December, 2005, b) **ROGERS ROAD, LLC**, a North Carolina limited liability company ("Declarant").

STATEMENT OF PURPOSE

Declarant is the developer and owner of certain real property located in Union County, North Carolina ("Property"). Declarant desires to create on the Property a residential community of single-family homes to be named POND SIDE and marketed as "'The Villas at Sun Valley" ("Subdivision").

Declarant desires to insure the attractiveness of the Subdivision, to prevent any future improvement thereof, to prevent nuisances and enhance the value of all properties within the Subdivision. Furthermore, Declarant desires to provide for the construction, maintenance and upkeep of any Common Areas, Sidewalks and related easements within the Subdivision, all for the common use and benefit of all Owners.

Declarant desires to provide for a system whereby all Owners will pay for the maintenance and upkeep of any Common Areas, in accordance with an established budget set by the Board.

Declarant desires to develop the Property in accordance with the North Carolina Planned Community Act, §47F-1-101, et seq., the Indian Trail Zoning and Subdivision Ordinances and to subject the Property to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which are for the benefit of the Property and each Owner.

Declarant further desires to form a North Carolina non-profit corporation to be known as Pondsides Owners Association, Inc. ("Association"), to which will be delegated and assigned the powers of owning, maintaining and administering the Common Areas, administering and enforcing the covenants and restrictions, and collecting and distributing the Assessments, in order to efficiently preserve, protect and enhance the value of the Subdivision, to ensure, for the benefit of each Owner, the specific rights, privileges and easements in the Common Areas, and to provide for the maintenance and upkeep of the Common Areas and Sidewalks, as provided in this Declaration and the Bylaws.

NOW, THEREFORE, Declarant declares that all of the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the Property and be binding on and inure to the benefit of all parties owning any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

Article I

Definitions

All capitalized terms used in this Declaration shall have the meanings set forth in

ARTICLE I.

Section 1.1 "Additional Property" shall mean and refer to (i) any additional real estate adjacent or contiguous to the Property shown on the Plat recorded in Plat Cabinet J, File 39, in the Office of the Register of Deeds in Union County, North Carolina, including, without limitation, the Real Property described on Exhibit A attached hereto, or (ii) any property located within one (1) mile of any boundary of the Property shown on the Plat or described on Exhibit A all or a portion of which may be made subject to the terms of this Declaration in accordance with the provisions of **Section 2.2.**

Section 1.2 "Amenity Area(s)" shall mean and refer to the parcel or parcels of land labeled "Amenity Area(s)" {or a similar term) on the Plat, together with any parking area, clubhouse, path, trail or other recreational amenity or facility constructed in the Common Areas for the common use and enjoyment of all Owners.

Section 1.3 "Annual Assessment" shall mean and refer to the amount to be levied annually by the Association against each Lot, as set forth in Section 6.2.

Section 1.4 "Architectural Control Committee" or "ACC" shall mean and refer to the committee that oversees the development and enforcement of the Guidelines and performs certain other functions described in ARTICLE IX. Unless and until the Board appoints an Architectural Control Committee, the Board shall function as the ACC.

Section 1.5 "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation for the Association attached as Exhibit B.

Section 1.6 "Assessments" shall mean and refer to the Annual Assessments, Supplemental Annual Assessments, Special Assessments, Special Individual Assessments and Initial Capital Assessment applicable to a Lot.

Section 1.7 "Association" shall mean and refer to THE NEIGHBORHOOD ASSOCIATION OF PONDSIDE, INC., a North Carolina non-profit corporation, its successor and assigns.

Section 1.8 "Board" shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 1.9 "Builder" shall mean and refer to NVR, Inc., and any other home builder designated as "Builder" by Declarant.

Section 1.10 "Bylaws" shall mean and refer to the Bylaws for the Association,

substantially in the form attached as **Exhibit C**, as amended, from time to time.

Section 1.11 "Common Area" or "Common Areas" shall mean and refer collectively to the Entrance Monument(s), "Entrance Monument Easements," Rogers Road Berm, Landscape Easement Area(s), Public Roads (prior to their acceptance for maintenance by the NCDOT or other governmental entity), the Amenity Area(s) and any other property or easements designated on the Plat as "Common Area," "Common Open Area," "Common Open Space," "COS," or other similar designation. The Association shall own Common Areas (or be granted an easement) for the common use and benefit of all owners. The listing and description of the components of the Common Area are illustrative of Declarant's present plans only and do not constitute a guaranty by Declarant or the Association that all or any part of such components will be constructed or installed by Declarant or the Association at any future time. Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Subdivision.

Section 1.12 "CPI" shall mean and refer to the Consumer Price index, All Urban Consumers, United States, All Items (1982-84 = 100) issued by the U.S. Bureau of Labor Statistics, as amended from time to time, for the most recent 12-month period for which the CPI is available.

Section 1.13 "Declarant" shall mean and refer to ROGERS ROAD, LLC, and such of its successors and assigns to whom the rights of Declarant are transferred by written instrument recorded in the Office of the Register of Deeds for Union County, North Carolina.

Section 1.14 "Entrance Monument(s)" shall mean and refer to one or more easement areas reserved and granted by Declarant in **Section 7.9**, over portions of the Common Area, and designated on the Plat as "Entrance Monument Easement" or other similar designation, the trees and shrubs installed therein in accordance with plans approved by the Town of Indian Trail, and any monuments and entrance signs located on such easement areas, together with lighting, irrigation system, landscaping and other improvements which may be constructed on such easement areas, to be used as one or more entryways. for the Subdivision or specific neighborhoods therein or other locations designated by Declarant.

Section 1.15 "Guidelines" shall mean and refer to the Architectural Guidelines published by the ACC, as set forth in **Section 9.3**.

Section 1.16 "Improvement" or "Improvements" shall mean and refer to any and all man-made changes or additions to any portion of the Property.

Section 1.17 "Initial Capital Assessment" shall mean and refer to the amount each Owner, other than Declarant or Builder, shall pay to the Association upon their acquisition of a Lot from Declarant in accordance with **Section 6.7**.

Section 1.18 "Landscape Easement Area" shall mean and refer to the landscape easement now or hereafter granted by Declarant along both sides of the main entrance road into the Subdivision and any other such areas designated as "Landscape Easement Area" or other similar designation on the Plat, all of which shall be maintained by the Association, as more particularly set forth in **Section 7.9**.

Section 1.19 "Lawn and Landscaping Guidelines" shall mean and refer to the Lawn and Landscaping Guidelines published by the Association, as set forth in **Section 4.6.3**.

Section 1.20 "Lot" or "Lots" shall mean and refer to the separately numbered parcels depicted on the Plat.

Section 1.21 "Maximum Annual Assessment" shall mean and refer to the maximum Annual Assessment that may be charged in a calendar year, as set forth in **Section 6.4.1**.

Section 1.22 "Member" shall mean and refer to every person or entity that holds a membership in the Association.

Section 1.23 "Mortgage" shall mean and refer to any mortgage constituting a first lien on a Lot.

Section 1.24 "Mortgagee" shall mean and refer to the owner and holder of a Mortgage on a Lot.

Section 1.25 "NCDOT" shall mean and refer to the North Carolina Department of Transportation.

Section 1.26 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot within the Subdivision, including the Declarant if it owns any Lot, but excluding any Mortgagee.

Section 1.27 "Parking Area(s)" shall mean and refer to the parking lot or lots which may be constructed over the Amenity Area(s) and/or other Common Areas for the common use, benefit and enjoyment of the Owners, their families, guests and invitees .

Section 1.28 "Plat" shall mean and refer to (i) the plat of the Subdivision recorded in Plat Cabinet J, File 39, in the Office of the Register of Deeds for Union County, North Carolina, (ii) any plats of any portions of the Additional Property which are subjected to this Declaration, and (iii) any revisions of such plat or plats recorded in the Office of the Register of Deeds for Union County, North Carolina.

Section 1.29 "Property" shall mean and refer to the property shown on the Plat, including the Lots, Public Roads and Common Areas, together with any leasehold interest or easement which the Association has or may hereafter acquire in any property adjacent to the Subdivision.

Section 1.30 "Public Roads" shall mean and refer to all roads and cul-de-sacs in the

Subdivision and shown on the Plat as "Public R/W," all to be maintained by the Association as more particularly set forth in **Section 4.6** until dedicated and accepted by the NCDOT or other governmental entity.

Section 1.31 "Reserve Fund" shall mean and refer the portion of the Annual Assessment to be used for the purposes set forth in **Section 4.7**.

Section 1.32 "Rogers Road Berm" shall mean and refer to the berm installed along Rogers Road by Declarant in accordance with plans approved by the Town of Indian Trail. The Rogers Road Berm shall not be modified without the prior written approval of the Town of Indian Trail.

Section 1.33 "Sidewalks" shall mean and refer to the sidewalks constructed in the Subdivision by Declarant in accordance with the Zoning and Subdivision Ordinances.

Section 1.34 "Special Individual Assessment" shall mean and refer to the amount levied by the Association for the purposes set forth in **Section 6.6**.

Section 1.35 "Special Assessment" shall mean and refer to the amount levied by the Association for the purposes set forth in **Section 6.5**.

Section 1.36 "Standard Mailbox/Newspaper Box" shall mean the standard style of mailbox and newspaper box for the Subdivision as set forth on **Exhibit D** and any replacement standard style of mailbox and newspaper box hereafter approved for the Subdivision by the ACC.

Section 1.37 "Supplemental Annual Assessment" shall mean and refer to an amount levied by the Board in addition to the Annual Assessment, as set forth in **Section 6.4.3**.

Section 1.38 "Subdivision" shall mean and refer to PONDSIDE SUBDIVISION, as shown on the Plat.

Section 1.39 "Water and Sewer System" shall mean and refer to the water and sewer system infrastructure constructed by Declarant in order to provide water and sewer services for the Subdivision and which shall be dedicated and accepted for public maintenance .

Section 1.40 "Zoning and Subdivision Ordinances" shall mean and refer to the zoning, subdivision and other applicable ordinances of the Town of Indian Trail and the conditions imposed by the Town of Indian Trail upon the zoning and subdivision approval of the Subdivision, including without limitation, the Special Use Permits with conditions granted for the Subdivision.

Article II

PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 2.1. Property. The real property, which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, is located in Union County, North Carolina, as more particularly described and shown on the Plat.

Section 2.2. Additions to the Property.

2.2.1 Declarant may cause any portion of the Additional Property to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the Office of the Register of Deeds for Union County, North Carolina. containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property.

2.2.2 Any Supplemental Declarations may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. No Supplemental Declaration shall revoke or modify the covenants and restrictions contained herein with respect to the Property, nor revoke or modify the covenants and restrictions established by previously filed Supplemental Declarations. without meeting the requirements for amendment set forth in **Section 12.3.** Notwithstanding the foregoing, Declarant or the Association shall have the right, without meeting the requirements for amendment set forth in **Section 12.3.** to amend this Declaration to reconfigure the Common Areas and or the Amenity Area(s) to reflect the actual final configuration of such areas.

Article III

PROPERTY RIGHTS

Section 3.1. Ownership of Common Areas. On or before five (5) years from the date that this Declaration is recorded, Declarant shall convey fee simple title by limited warranty deed to the Common Area to the Association, to be owned and maintained by the Association. Declarant reserves the right to construct (i) Entrance Monument(s) in the Entrance Monument Easement(s); (ii) appropriate landscaping in any Entrance Monument easements and the Landscape Easement Area(s); (iii) the Public Roads, as reflected on the Plat; (iv) the Amenity Area(s); (v) pathways, trails, landscaped areas and other improvements to the Common Areas deemed reasonable and necessary by Declarant:

(vi) the Sidewalks; and (vii) the Water and Sewer System. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and benefit of the public (with the exception of the Public Roads, which will eventually be dedicated and accepted for public maintenance by the NCDOT or other governmental entity and the Water and Sewer System which will eventually be dedicated and accepted for public maintenance).

Section 3.2. Owners' Rights to Use and Enjoy Common Areas. Each

Owner

shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

3.2.1 the right of the Association to promulgate and enforce reasonable rules and regulations

governing the use of the Common Areas:

3.2.2 the right of the Association to charge reasonable admission and other fees for the use of the Amenity Area(s):

3.2.3 the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use the Amenity Area(s) by an Owner for any period during which any Assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any violation or infraction of its published rules and regulations;

3.2.4 the right of the Declarant or the Association to grant utility, drainage and other easements across the Common Areas;

3.2.5 the right of the Association to dedicate or transfer all or part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by Members representing two-thirds (2/3) of the votes of each class of Members and has been recorded.

3.2.6 the right of the Association, in accordance with the Articles of Incorporation and the Bylaws to borrow money secured by a lien on the Common Areas for the purposes of Improving the Common Areas and the Improvements; and

3.2.7 the provisions of ARTICLE VII.

Section 3.3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right of enjoyment to the Common Areas and facilities located thereon to the members of the Owner's family and his guests, tenants, or invitees.

Section 3.4. Parking Areas. Declarant shall construct, and the Association shall maintain, repair and, if destroyed, replace as a common expense of the Association, any paved Parking Area(s) constructed by Declarant and located on the Common Areas. The Parking Area(s) shall be constructed and maintained in order to provide parking for the Owners, and may be used by Declarant and its assigns and the Owners, their families, guests and invitees, in connection with their use of the Amenity Area(s). No Parking Area(s) may be used for the storage of vehicles or for parking which is not in connection with the then current use of the Amenity Area(s) by Declarant and the Owners, their families, guests, and invitees.

Article IV

The Association

Section 4.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws.

Section 4.2. Classes of Lots and Voting Rights. The voting rights of the Members shall be appurtenant to the ownership of Lots. There shall be two (2) classes of Lots with respect to voting rights:

4.2.1 Class A Lots. All Lots shall be Class A Lots, except Class B Lots (as defined below).

Each Class A Lot shall entitle the Owner(s) of the lot to one (1) vote for each Class A Lot owned. When more than one person owns an interest (other than a leasehold, security interest or mortgage) in any Lot, all such persons shall be Members and their appurtenant 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 Class A Lot.

4.2.2 Class B Lots. Class B Lots shall be all Lots owned by Declarant and Builder that have not been conveyed to purchasers who are not affiliated with Declarant or Builder. Declarant and Builder shall be: entitled to four (4) votes for each Class B Lot owned by them.

Section 4.3. Turnover Date. The Class B Membership shall cease and be converted to Class A Membership on the first to occur of the following events:

- 4.3.1** when the number of votes in the Class A Membership exceeds the total number of votes outstanding in the Class B Membership; or
- 4.3.2** upon the expiration of ten (10) years after the recordation of this Declaration ; or
- 4.3.3** upon the election of Declarant, in its sole discretion, to terminate its Class B Membership and to convert the Class B Lots to Class A Lots. Any such election, to

effective, must be in writing and recorded in the Office of the Register of Deeds for Union County, North Carolina.

Section 4.4. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Subdivision as well as its own books, records, and financial statements which will be available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours.

Section 4.5. Management Contracts. The Association is authorized to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board and to perform any or all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by mutual agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association, with or without cause, upon ninety (90) days prior written notice to the manager, without payment of a termination fee.

Section 4.6. Maintenance.

- 4.6.1 **Public Roads.** Prior to their acceptance for public maintenance, the Association shall maintain the Public Roads, provided that Declarant, in its sole discretion, has the right to reimburse the Association for maintenance costs until the NCDOT or other governmental entity accepts the Public Roads for maintenance. Such maintenance shall include repair and reconstruction, when necessary. Maintenance of the Public Roads shall conform to the standard of maintenance (if one is ascertainable) that would be required by the NCDOT or other governmental entity before it would accept such Public Roads for maintenance.
- 4.6.2 **Common Areas.** Maintenance of Entrance Monument(s) shall include maintenance, repair and reconstruction, when necessary, of the Entrance Monuments(s), signage, irrigation, planters and lighting located within the Entrance Monument Easement(s) and Landscape Easement Area(s), and providing and paying for landscaping and utility charges for irrigating and lighting the monuments and signage located thereon (if applicable). The Amenity Area(s) and all other Common Areas (and all associated Improvements), including without limitation, any detention ponds or facilities, shall be kept clean and free from debris and maintained in an orderly condition consistent with their intended use, including any repair and replacement of any landscaping, utilities, or Improvements located thereon. Except as provided in the Lawn and Landscaping Guidelines, the Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the improvements within the boundaries thereof, with the exception of the Entrance Monument(s), Sidewalks or Landscape Easement Area(s) if located on any Lot.

4.6.3 **Lot Lawns and Landscaping.** The Association shall maintain the lawns and landscaping of the Lots in accordance with Lawn and Landscaping Guidelines, as promulgated, published and amended from time to time by the Association. The Lawn and Landscaping Guideline shall establish, among other things, the policies and procedures governing the lawn and landscaping services provided by the Association for Owners of the Lots.

4.6.4 **Sidewalks.** The Association shall maintain the Sidewalks in the Subdivision to the standards of maintenance required by the Town of Indian Trail.

Section 4.7. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the following purposes:

4.7.1 the periodic maintenance, repair, reconstruction and replacement of the Common Areas and any Improvement located on such Common Areas (including, but not limited to the Public Roads prior to acceptance for public maintenance) and any other improvements or areas the Association is required to maintain by this Declaration which the Association is obligated to maintain;

4.7.2 to fund unanticipated expenses of the Association, and/or

4.7.3 to acquire equipment or services deemed necessary or desirable by the Board, from time to time, in its discretion.

The Reserve Fund shall be collected and maintained out of the Annual Assessment as set forth in **Section 6.2.** The amount of the Reserve Fund shall be determined, from time to time, by the Board.

ARTICLE V

GENERAL ASSESSMENT PROVISIONS

Section 5.1. Certificate Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.2. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment (or installment thereof) not paid by its due date, shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been established by the Board to defray the costs arising because of late

payment. The Association may bring an action at law against the delinquent Owner or foreclose the lien against the Lot and the right to use the Common Areas, and interest, late payment charges, costs and reasonable attorneys' fees related to such action or foreclosure shall be added to the amount of such Assessment. No Owner may waive or otherwise escape liability for the Assessments by not using the Common Areas, or by abandoning his Lot.

Section 5.3. Subordination of the Lien to Mortgages. The lien of the Assessments provided for in ARTICLE VI shall be subordinate to the lien of any first Mortgage on a Lot. Sale or transfer of any Lot shall not affect the Assessment lien. The sale or transfer of any Lot pursuant to Mortgage foreclosure, or any proceeding in lieu thereof, however, shall extinguish the lien of such Assessments as to payments that become due prior to such sale or transfer. Provided, however, that the Board may, in its sole discretion, determine that such unpaid Assessments should be collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners, notwithstanding the fact that such pro rata portions may cause the applicable Assessment (as applicable), to be in excess of the applicable Maximum Annual Assessment amount permitted hereunder. No sale or transfer shall relieve the purchaser of such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any Mortgage as above provided.

ARTICLE VI

COVENANT FOR ANNUAL ASSESSMENTS, SUPPLEMENTAL ANNUAL ASSESSMENTS, SPECIAL ASSESSMENTS, SPECIAL INDIVIDUAL ASSESSMENTS AND INITIAL CAPITAL ASSESSMENTS

Section 6.1. Creation of the Lien and Personal Obligation for Assessments. Declarant and each owner of any Lot covenants and agrees to pay Assessments to the Association levied upon the Lots which it owns. Any such Assessment, together with interest, costs, and reasonable attorneys' fees shall be a charge and a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment is due or levied. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed.

Section 6.2. Purpose of Annual Assessment. The Annual Assessment shall be used as follows:

- 6.2.1 to repair, maintain, reconstruct (when necessary), keep clean and free from debris consistent with their intended use, the Common Areas, as more particularly set forth in **Section 4.6;**
- 6.2.2 to maintain and repair the Public Roads, as more particularly set forth in **Section 4.6;**

- 6.2.3 to maintain and repair the Sidewalks, as more particularly set forth in **Section 4.6**;
- 6.2.4 to maintain and repair the Entrance Monument(s) and Entrance Monument Easement(s), Landscape Easement Area(s), Amenity Area(s) and any other improvements within the Common Areas;
- 6.2.5 to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;
- 6.2.6 to pay all legal, accounting, architectural, engineering, and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;
- 6.2.7 to maintain the Reserve fund, as set forth in **Section 4.7**;
- 6.2.8 to operate the clubhouse and any other recreational amenity or facility constructed in the Common Area for the common use and enjoyment of all Owners; and
- 6.2.9 to repair and maintain the lawns and landscaping of the Lots in accordance with the Lawn and Landscaping Guidelines.

Section 6.3. Payment of Annual Assessment: Due Dates.

The Annual Assessment shall commence as to each Lot on July 1, 2006. The initial Annual Assessment shall be \$984.00 and the Annual Assessments shall be paid in monthly installments of \$82.00 each, commencing July 1, 2006 and continuing on the first day of each month thereafter. For each calendar year thereafter, the Annual Assessment shall include such amounts for the operation, repair and maintenance of the Amenity Area(s) as are set by the Board in accordance with **Section 6.4**. The Board shall set the amount of the Annual Assessment as to each Lot for any calendar year at least thirty (30) days prior to January 1st of such calendar year, and the Association shall send written notice of the amount of the Annual Assessment, as well as the amount of the installment due, to each Owner on or before January 1st of such calendar year. The failure of the Association to send, or of an Owner to receive, such notice shall not relieve any Owner of its obligation to pay the Annual Assessment. Notwithstanding the foregoing, the Board may alter the dates of the fiscal year for setting the Annual Assessment and may increase or decrease the frequency of collection of Annual Assessment installments in any reasonable manner.

Section 6.4. Maximum Annual Assessments: Supplemental Annual Assessment.

- 6.4.1 For each year following the initial Annual Assessment, the Board has the authority to increase the Annual Assessment each year by a maximum amount equal to the previous year's Annual Assessment times the greater of the following: (i) ten percent (10%); or (ii) the annual percentage increase in the CPI (the "Maximum Annual Assessment"). (If the CPI is discontinued, the Board shall use the index most similar to the CPI that is published by the United States Government indicating changes in the cost of living.) If

the Annual Assessment is not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessment may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms or the preceding sentence for such future year, by a vote of the Board, and without a vote of the Members.

6.4.2 After the initial Annual Assessment, the Maximum Annual Assessment may be increased above the maximum amount set forth in **Section 6.4.1** by a vote of no less than two-thirds (2/3) of the eligible Members who are voting in person or by proxy at the annual meeting or at a special meeting duly called for this purpose, in accordance with the Bylaws.

6.4.3 The Board may set the Annual Assessment at an amount not in excess of the Maximum Annual Assessment. If the Board sets less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determines that such lesser Annual Assessment cannot fund important and essential functions of the Association, the Board may, without a vote of the Members, levy a Supplemental Annual Assessment in accordance with the Bylaws. In no event, shall the sum of the Annual Assessment and Supplemental Annual Assessment for any year exceed the applicable Maximum Annual Assessment for such year, other than as set forth in **Section 6.4.2**.

Section 6.5. Special Assessment. In addition to the Annual Assessment authorized above, the Association may levy in any calendar year, a Special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) the construction of any Common Area Improvements which are not originally constructed by Declarant; (ii) the reconstruction, repair or replacement of the Common Areas, including all improvements located thereon, and including fixtures and personal property related thereto; or (iii) any other extraordinary, unanticipated cost which cannot otherwise be funded through the established Assessments for that current year.

Section 6.6. Special Individual Assessment. In addition to the Annual Assessments, Supplemental Annual Assessments, and Special Assessments authorized above, the Board shall have the power to levy a Special Individual Assessment applicable to any particular Lot Owner (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas and/or any improvements located thereon, caused by any act or omission of such Owner(s), members of such Owner's family, or such Owner's agents, guests, tenants, employees, or invitees and not the result of ordinary wear and tear; (ii) for the purpose of paying for the cost of any repair of the Lot Owner's lawn or landscaping, caused by any act or omission of such Owner(s), members of such Owner's family, or such Owner's agents, guests, tenants, employees, or invitees; or (iii) for payment of liquidated damages, reimbursement amounts, fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, the Guidelines or any rules or regulations promulgated by the Association or the Declarant pursuant to this Declaration or the Bylaws Provided, however, that Declarant shall not be obligated to pay any Special Individual Assessment, except with Declarant's prior

written approval. The due date of any Special Individual Assessment levied pursuant to this **Section 6.6** shall be fixed in the Board's resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner{s} at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 6.7. Initial Capital Assessment. Each Owner shall, upon their acquisition of a Lot from Builder, pay to the Association a one-time capital assessment of Two Hundred Dollars (\$200.00) (the "Initial Capital Assessment.") The Initial Capital Assessment shall be deposited by the Association into the Association's banking account as working capital.

Section 6.8. Assessment Rate.

- 6.8.1** Subject to the exceptions set forth to **Section 6.8.2.** the Annual Assessments must be fixed at a uniform rate for all Lots; and
- 6.8.2** During the four (4) month period commencing with Builder's acquisition of a Lot, the prorated portion of the Annual Assessment for such Lot shall be reduced by one-half (1/2), and after the expiration of the four (4) month period, full Annual Assessments shall be paid.
- 6.8.3** Until the Turnover Date or such earlier date as Declarant shall elect, Declarant shall not pay any Annual Assessment for any Lot owned by Declarant and, instead, shall pay any amount necessary to cause all expenses of the Association to be paid in full.

ARTICLE VII

RESTRICTIONS

Section 7.1. Land Use, Building Type and Residential Restriction.

All Lots in the Subdivision shall be used only for private residential and recreational purposes. Any home occupations or business shall comply with the Zoning and Subdivision Ordinances. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single family residential dwelling, unless otherwise provided herein, and only one single-family residential dwelling not exceeding three (3) stories in height above ground shall be erected or permitted to remain upon any Lot. No log cabin (or structure resembling a log cabin, or having the architectural characteristics of a log cabin), mobile home, modular home or shell home may be erected or permitted to remain on any Lot. Not less than fifty percent (50%) of the residences constructed in the Subdivision shall have full brick fronts. A private garage (not exceeding three (3) car capacity), outbuildings, incidental to the residential use of the Lot are permitted, upon the condition that they are not rented, leased nor otherwise used for remuneration, subject to the other covenants and restrictions contained herein. No detached garage or outbuildings shall at any time be used as a residence. Any ownership or leasing arrangement for a Lot having the characteristics of a vacation time-sharing ownership plan, a

vacation time sharing lease plan, or any other form of interval, sequential or shared ownership is expressly prohibited. Prior to the construction of any improvements on a Lot, all permits required by the Zoning and Subdivision Ordinances shall be obtained from the Town of Indian Trail.

Section 7.2. Dwelling Size. Any dwelling erected upon any Lot shall contain not less than one thousand five hundred (1,500) square feet and not less than thirty (30) of the Lots zoned R-20 shall contain not less than two thousand (2,000) square feet. The square footage requirements refer to enclosed heated floor area and are exclusive of the area in unfinished basements, unheated porches of any type, attached or detached garages, carports, any type of porte cochere, and unheated storage areas, decks or patios.

Section 7.3. Building Construction and Quality. All improvements, buildings and outbuildings erected upon any Lot shall be constructed of new material of good grade, quality and appearance and shall be constructed in a proper, workmanlike manner. No building shall be erected unless it is completely underpinned with a solid brick, brick or stone-covered block or stucco foundation. No exterior surface of any building shall be asbestos shingle siding, imitation brick or stone-roll siding, or exposed concrete or cement blocks. The exterior surface of any garage, outbuilding or appurtenant structure or building erected on or located on any Lot shall be architecturally compatible with, and of material and construction comparable in cost and design to, the exterior surface of the dwelling located on the Lot. All buildings shall have roofs (except for dormers, porches and bay windows) of not less than six (6) vertical by twelve (12) horizontal pitch and covered with slate, cedar shakes, tile, composition (fiberglass), or architectural (sculpted) shingles.

Section 7.4. Temporary Structure; Structure Materials. No dwelling or building of a temporary nature shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic, vinyl or canvas tent, barn, carport, garage, utility building, storage building or other metal, fiberglass, plastic, vinyl or canvas structure shall be placed on any Lot or attached to any dwelling. Provided, however, that Declarant reserves the right to erect or move temporary buildings or trailers onto the Lots owned by Declarant, to be used for storage or for construction or sales offices. Prior to the construction of any temporary or other structures on a Lot, all applicable permits required by the Zoning and Subdivision Ordinances shall be obtained from the Town of Indian Trail.

Section 7.5. Building Setback Lines. No building on any Lot (including any stoops, porches, or decks) shall be erected or permitted to remain within the front (street right-of-way), side (abutting right-of-way for a corner Lot) or rear building setback lines as noted on the Plat. The foregoing notwithstanding, gazebos or similar minor aesthetic improvements may encroach within the rear setback, provided that they: (i) are single story, (ii) contain less than one hundred fifty (150) square feet; and (iii) are not enclosed by walls or other surfaces unless such surfaces meet the openness test established for perimeter fencing in Section 7.11.

If the Zoning and Subdivision Ordinances, any floodway regulations or other ordinance, law or regulation applicable to a Lot prescribes greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall be governed by the greater setbacks. No structures or Improvements may be constructed or placed within

the right-of-way of any of the Public Roads (so as to prevent such Public Roads from being accepted for maintenance by the NCDOT or other applicable governmental entity). If an Owner violates this provision, the Owner of the nonconforming Lot shall reimburse Declarant, the Association or the ACC (as applicable) within five: (5) business days following the submission of an invoice for any costs or expenses incurred by Declarant, the Association or the ACC for delaying the acceptance for maintenance of the Public Roads and such fines as may be levied by the Board. The Association shall have the authority but not the obligation, in its sole discretion, to levy a Special Individual Assessment against an Owner who fails to abide by the terms of this **Section 7.5.** to recoup the expenses incurred by Declarant and/or the Association in seeking to cure any such violation and/or any fine, and shall be subject to the Association's Assessment collection remedies as specified in ARTICLE V of this Declaration.

Section 7.6. Minor Setback Violations. In the event of the unintentional violation of any of the building setback restrictions, in the amount of ten percent (10%) or less of the applicable setback restriction, Declarant reserves the right, but is not obligated, to waive in writing such violation of the setback restrictions upon agreement of the Owner of the Lot upon which the violation occurs and the Owner of any Lot adjoining the violated setback, provided that such change is not in Violation of any zoning or subdivision ordinance or other applicable law or regulation. If any violation is a violation of the Zoning and Subdivision Ordinances, a variance or other similar approval must be received from the Town of Indian Trail.

Section 7.7. Combination or Subdivision of Lots. Except as otherwise set forth herein, no Lot shall be subdivided by sale or otherwise so as to reduce the Lot area shown on the Plat. However, a Lot Owner may combine one Lot with contiguous Lot(s) so long as the parcel or parcels which result from such combination do not violate any applicable zoning ordinance, subdivision ordinance or other applicable law or regulation. In the event that two or more Lots are completely combined so as to create one parcel, the resulting parcel shall be considered as one Lot for the purposes of this ARTICLE VII, but shall continue to be considered as two or more Lots for all other purposes (including voting and Assessments). Furthermore, the Owner of any Lot which combines with all or a portion of contiguous Lot(s) shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. Notwithstanding the foregoing, Declarant reserves the right to change the boundaries or dimensions of any Lots still owned by Declared or for any reason and any Lot or Lots which result from such change by Declarant shall not be subject to any additional Assessment.

Section 7.8. Reserved Easements. Declarant hereby reserves easements for the installation and maintenance of utilities (the water and sewer system, electricity, gas, telephone, storm drainage, cable television, etc.) and drainage facilities over the front and rear ten (10) feet of each Lot and the side five (5) feet of each Lot. Additional easements for the installation and maintenance of storm drainage facilities and utilities and other purposes deemed necessary or appropriate by Declarant (e. g., sight triangles, fire hydrants , entry signage, etc.) are reserved as more particularly shown and delineated on the Plat and in other recorded easement documents. Within such easements, no structure, planning or other materials shall be placed or permitted to remain which may damage or

interfere with the installation and maintenance of utilities, which may interfere with drainage and the flow of water within the easement areas or which may interfere with the purpose for which such easement was granted. The Owner of each Lot shall maintain that portion of the Lot lying within the easement areas as defined herein and shall maintain any Improvements located thereon, except those Improvements installed and maintained by a public authority or utility company. All electric and gas meters must be located on the side or at the rear of the dwelling. Declarant reserves the right to create and impose additional easements over any unsold Lot or Lots for the installation and maintenance of roads, drainage, utilities, fire hydrants, sight triangles, entry signage and any other purposes deemed necessary or appropriate by Declarant by the recording of appropriate instruments, and such easements shall not be construed to invalidate any of these covenants.

Section 7.9. Entrance Monument and Landscape Easement Area(s).

Declarant hereby grants, establishes, creates and reserves for the benefit of Declarant and the Association, and their successors and assigns, non-exclusive perpetual easements for the purpose of landscaping and maintaining the entryway and erecting and maintaining the Entrance Monument(s) for the Subdivision as "Entrance Monument(s) Easement" on the Plat. Declarant or the Association shall have the right to enter, landscape and maintain the Entrance Monument(s) as an entryway to the Subdivision. Further, Declarant or the Association may erect and maintain one or more stone monuments, with an entrance sign bearing the name of the Subdivision and Declarant and may erect and maintain lighting for the Entrance Monument(s), planters and other Improvements typically used for an entryway. Declarant further hereby grants, establishes, creates and reserves for the benefit of Declarant and the Association, and their successors and assigns, non-exclusive perpetual easements for the purpose of landscaping and maintaining the property adjacent to the main entry road for the Subdivision as "Landscaping Easement Area" or other similar designation on the Plat.

Section 7.10. Stormwater Drainage Easement. Declarant reserves over the Common Areas an easement for drainage of stormwater runoff from the Lots and Public Roads within the Subdivision.

This section was replaced in its entirety and may be found in the amendment section of the document

Section 7.11. Walls, Fences and Hedges. ~~No fence, hedge or wall of any type or kind shall be erected or maintained on a Lot except such approved fence, hedges or walls as may be installed, constructed or erected with the initial construction of the main dwelling located on said Lot, or as may later be approved in writing by the ACC in accordance with ARTICLE IX.~~

~~The following Fence and Wall Guidelines are established with regards to the erection of fences and walls. No metal fences, except for a 2 x 4 wire mesh inside of an approved wooden fence to contain pets, are allowed on a Lot. No solid fence is allowed on the perimeter of any Lot. All perimeter fences on a Lot must be rail type or picket fences with at least fifty percent (50%) of surface area open. Privacy fences are permitted around pools or patios with a maximum height of six (6) feet. Fences shall be no closer to the right-of-way of any street than the rear corner of the house upon any such Lot, provided, that in the case of a corner Lot, side yard fences shall be no closer to the right-of-way of any street than~~

~~the side of the house upon any such Lot. The ACC shall have the authority to grant written exceptions to the above-referenced Fence and Wall Guidelines in accordance With ARTICLE IX and modify such Guidelines as therein provided.~~

Section 7.12. Signs. No signs of any kind may shall be displayed to the public view on any Common Area, other than the Entrance Monument(s), as set forth in Section 7.9 No signs of any kind may be displayed to the public view on any Lot, with the following exceptions which may not exceed five (5) square feet in size: (a) one sign (on the Lot only) advertising the Property for sale or rent; (b) one sign on the Lot only used by a Builder to advertise the Lot during the construction and sales period; and (c) temporary political signs. These restrictions shall never apply to permanent Entrance Monument(s) or to temporary entry signs or advertising by Declarant, or for sale sign installed by Declarant or its agents prior to the sellout of the Subdivision. All signs in the Subdivision shall comply with the Zoning and Subdivision Ordinances.

Section 7.13. Antennas; Satellite Dishes or Discs. No radio or television transmission or reception towers, antenna, satellite dishes or discs shall be erected or maintained on any Lot, except that one (1) dish or disc not exceeding eighteen inches (18") in diameter or diagonal measurement for receiving direct broadcast satellite service ("DBS") or multi-point distribution services ("MDS") may be erected and maintained on each Lot. No roof-mounted antenna, dishes or discs shall be permitted on any Lot if adequate broadcast reception can be obtained without mounting such equipment on the roof of the house; provided, however, that if such roof-mounted equipment is required, no antenna or related structures may be mounted on masts exceeding twelve (12} feet in height above the highest roof line ridge of the house. Any dish, disc, or antenna (with associated mast) shall be reasonably camouflaged and screened from view from the Public Roads, and shall not be located in the area between the street right-of-way line and the minimum building setback lines applicable to the Lot. In cases where an antenna wire does not require the use of a mast, landscaping or some other means to reduce its visual impact must camouflage such wire.

Section 7.14. Lot Maintenance; Trash Disposal. Each Owner shall keep his Lot in a clean and orderly condition and shall keep the Improvements thereon in a suitable state of painting and repair, promptly repairing any damage caused by fire or other casualty. No clothes line may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of trash of any character whatsoever and no trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside of an enclosed structure, except when temporarily placed in closed, sanitary containers pending removal by trash collection authorities or companies.

Section 7.15. Parking. No truck or commercial vehicle in excess of one-ton load capacity, or any vehicle under repair, wrecked or junked motor vehicle shall be parked upon or permitted to remain on any Lot, Common Area, or other portion of the Property. No trailer, mobile home, recreational vehicle, camper or boat shall be used as a residence, either temporarily or permanently. No trailer, mobile home, recreational vehicle, camper or boat shall be parked upon or be permitted to remain on any Lot for a period exceeding twenty-four (24) hours. All automobiles, trucks,

trailers, campers, motor homes and recreational vehicles must have a current license plate affixed and all such vehicles must be parked in a carport, enclosed garage, or on a concrete or asphalt driveway.

Section 7.16. Public Water and Sewer System. Declarant shall construct the Water and Sewer System. All pipes and other equipment necessary for the operation and maintenance of the Water and Sewer System shall be located within the utility easements described in **Section 7.8** within Public Road rights-of-way. Upon its completion, the Water and Sewer System and all mains, pipes, equipment and other personal property which is part thereof, shall become the property of Union County. The Water and Sewer System shall be the sole source of potable water for the Subdivision, and no well may be dug or constructed on any Lot for the purpose of providing a domestic water supply, provided, however, the construction or installation of a well for irrigation purposes is permitted, provided, that the housing for the well pump be located to the rear of the residence constructed on the Lot.

Section 7.17. Nuisances. No noxious or offensive trade or activity shall be carried on or upon any Lot or Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No substance, thing or material shall be kept upon any Lot or Common Area that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or Common Area with the exception of dogs, cats, or other household pets, which may be kept or maintained provided they are not kept, bred, or maintained for commercial purposes. No more than three (3) household pets shall be kept or maintained per Lot except for newborn offspring of such household pets that are under nine (9) months in age.

Section 7.18. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot or Common Area, except during such reasonable time period as is necessary for completion. The exterior of all houses and other structures must be completed within one (1) year from the date of commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or natural calamities. No construction materials of any kind may be stored within the right-of-way of any Public Roads. The responsible Owner or Builder shall repair any damage to any Public Roads, curb or Sidewalk or any part of any Common Areas or any utility system caused by their negligence. If such responsible party fails to repair such damage, Declarant or the Association may make or provide for such repairs, and the responsible Owner shall immediately reimburse the repairing party for its reasonable out-of-pocket expenses in making such repairs. The Owner of each Lot and any Builders shall at all times keep contiguous public and private areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of Improvements on the Lots, Public Roads. and any Common Areas. Declarant or the Association may provide for the cleaning of public and private areas due to the activities of the responsible party and may assess the responsible party a reasonable charge not to exceed the actual cost for such cleaning. Declarant and each Owner or

Builder shall, consistent with standard construction practices, keep all portions of the Lots, Public Roads, and Common Areas free of unsightly construction debris and shall at all times during construction either provide dumpsites for the containment of garbage, trash or other debris which is caused by construction of Improvements on a Lot or Common Areas, or take other measures consistent with standard construction practices necessary to keep the Lot, Public Roads, and all Common Areas free of such garbage, trash, or other debris. Each Owner and Builder shall be responsible for erosion control protection during any grading, site preparation or earth-disturbing operation, as described and defined in the Guidelines.

Section 7.19. Mail and Newspaper Boxes. All mailboxes and newspaper boxes in the Subdivision shall be of the Standard Mailbox/Newspaper Box style and will be initially installed by Builder. Each Owner, at such Owner's expense, shall maintain and replace, if necessary, the Standard Mailbox/Newspaper Box for the Subdivision installed by the Builder. No other mailbox or newspaper box shall be erected or maintained on any Lot other than the Standard Mailbox/Newspaper Box. The location of the Standard Mailbox/Newspaper Box on a Lot shall be established by Declarant and may not be changed or relocated without the approval of Declarant or the ACC.

This section was replaced in its entirety and may be found in the amendment section of the document

Section 7.20. Lawn Furniture and Statues. ~~No lawn furniture or decorative items, such as statuettes or renderings of animate or inanimate objects, shall be maintained in the front or side yards of any Lot unless shielded from view by landscaping, a fence or a wall approved in advance in writing by the ACC.~~

Section 7.21. Non-waiver. No delay or failure on the part of an aggrieved party to invoke an available remedy with respect to a Violation of any provision contained in or referred to in this Declaration shall be held to be a waiver by that party of any right available to the party upon the recurrence or continuance of the violation or the occurrence of a different violation.

Section 7.22. Removal of Mature Trees: Landscaping. Except for trees removed by Declarant or Builder, any "street trees" installed by Declarant or Builder and any "mature trees" may not be cut down or otherwise removed without the specific written approval of the Declarant, the ACC and the Town of Indian Trail pursuant to the provisions of the Zoning and Subdivision Ordinances. For purposes of this Declaration, the term "mature trees" shall mean all evergreen or deciduous trees with a caliper of four (4) inches or greater, measured at a point which is twelve inches (12") from ground level. Furthermore, in the event that trees, shrubs or ground cover are completely removed (as opposed to thinned) in connection with the improvement of any Lot, such cleared portions of the Lot shall be covered with grass or shall be landscaped with plants, shrubs, trees, mulch, wood chips, pine needles and/or similar landscaping Improvements.

Declarant hereby reserves the right and easement benefiting Declarant, the Association, and/or the ACC to go upon any Lot or other portion of the property to replant or order the replanting of any

"street trees" or "mature trees" removed within the Subdivision in violation of the terms of this **Section 7.22**. If Declarant, the Association, and/or the ACC exercises its easement rights pursuant to the terms of this **Section 7.22**, the Owner of the nonconforming Lot shall reimburse Declarant, the Association, and or the ACC (as applicable) within five (5) business days following the submission of an invoice for any costs or expenses incurred. The exercise or nonexercise of the easement rights contained in this **Section 7.22**, shall be subject to the discretion of the Declarant, the Association, and/or the ACC, provided that Declarant, the Association, and/or the ACC shall not have the obligation to exercise such rights. Declarant, the Association, and/or the ACC shall have the authority to levy a Special Individual Assessment against an Owner who cuts, damages, or removes any "street trees" or "mature trees" on any part of the Common Areas, their Lot or any other Lot in violation of the above provisions or the Guideline.

Section 7.23. Compliance With Zoning and Subdivision Ordinances.

In all applicable situations, any Owner of a Lot must reference the Zoning and Subdivision Ordinances of the Town of Indian Trail and follow all restrictions as set forth and comply with all of the provisions of the Zoning and Subdivision Ordinances of the Town of Indian Trail.

This section was added and may be found in the 2011 Amendment section of the document

Sections (b)iv. and (b)v. were added and may be found in the 2022 Amendment section of the document

Section 7.24. Leasing. The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of the Section.

(a) **Definition** "Leasing" for purposes of the Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the title Owner for which the Owner receives consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

(b) **Leasing Provisions.** Leasing of Lots shall be governed by the following provisions:

i. **General.** Lots may be leased only in their entirety; no fraction or portion may be leased without prior written approval from the Board of Directors and issuance of a leasing permit as set forth below. All leases shall be in writing. Within seven (7) days after executing a lease agreement for the lease of a Lot, the Lot Owner shall provide the Board with a copy of the lease and the name of the lessee and the names of all other people to occupy the Lot. The Lot Owner shall provide the lessee copies of the Declaration, Bylaws and the rules and regulations.

ii. **Leasing Permits.** An Owner's request for a leasing permit shall be approved if current outstanding leasing permits have not been issued for more than 10% of the total Units in the Community. A leasing permit shall be automatically revoked upon the

happening of any of the following events: (1) the sale or transfer of the unit to a third party (excluding sale or transfers (a) to Owner's spouse, (b) a person cohabitating with the Owner, and (c) a corporation, partnership, or company or legal entity in which the Owner is a principal); (2) the failure of the Unit Owner to lease his or her Unit within 90 days of the leasing permit having been issued; or (3) the failure of Unit Owner to have his or her Unit leased for any consecutive 90-day period thereafter. If leasing permits have been issued for more than 10% of the Units, no additional leasing permits shall be issued until the number of outstanding current leasing permits fall below 10% of the total Units in the Community. Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued the same if they desire when the number of current outstanding leasing permits falls to less than 10% of the total Units in the Community.

iii. Compliance With Declaration, Bylaws, and Rules and Regulations, Use of Common Property, and Liability for Assessments. Any lease of a Lot shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each lessee by occupancy of a Lot, covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot.

iv. Waiting Period. No Owner who acquires title to a Lot on or after the date this amendment is recorded shall be permitted to lease the Lot until the Owner lives in the Lot as their primary residence for at least twelve (12) consecutive months after the recording date of the deed conveying said Lot to such owner ("Waiting Period"). In the event that any Lot is leased for any period of time in violation of this mandatory twelve (12) month Waiting Period, the Waiting Period shall be immediately tolled and any time which elapses while the unpermitted lease remains in effect shall not count toward satisfaction of the Waiting Period described herein. Notwithstanding anything else to the contrary, however, the Waiting Period shall not apply to any person or entity who acquires title to a Lot by bequest or inheritance.

v. Minimum Lease Term. If leased, the Lot must be leased for a minimum period of twelve (12) months ("Minimum Lease Term"). The Lot may be leased only to tenants who intend to occupy the Lot for the Minimum Lease Term. No Lot may be leased for any type of periodic tenancy, (e.g., "week to week", "month to month", "year to year", etc.). Any extension of a lease may be permitted but must be for the Minimum Lease Term unless the Board grants and exception in writing. No Owner may advertise the Lot for lease for less than the Minimum Lease Term.

a. Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws and rules and regulations adopted

pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure compliance with the foregoing. The Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall be responsible for all violations by such Occupants. In the event that the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of such violation shall be given to the Owner and such fine shall be imposed against the Owner. Unpaid fines shall constitute a lien against the Lot when a Claim of Lien is filed with the Clerk of Court.

Any violation of the Declaration, Bylaws or rules and regulations by the lessee, any Occupant, or any person living with the lessee, is deemed to be in default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law.

b. Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities.

c. Applicability of this Section. This Section shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

Section 7.25. Lighting. Architectural lighting, flood lights, motion or other security lighting and security cameras are permitted around the house so long as the same does not unreasonably interfere with the enjoyment of other Lot Owners. Seasonal holiday decorative lights are permitted. However, Holiday lighting must be removed within two (2) weeks after the holiday.

ARTICLE VIII

INSURANCE

Section 8.1. Types of Insurance Required. The Board shall obtain and maintain at all times the following types of insurance;

8.1.1 Fire and Casualty. All Improvements and all fixtures included, in any Common Areas and all personal property and supplies belonging to the Association, shall be insured in an

amount equal to 100% of the current replacement cost up to the amount specified in the insurance policy (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board with the assistance of the insurance company providing coverage. The Board shall, at least annually, review the insurance coverage required herein and determine 100% of the current replacement cost of such Improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire, windstorm, vandalism and malicious damage and all perils covered by a standard "all risk" insurance policy. All such policies shall provide that the Board and the Insurance company shall approve adjustment of loss. In addition to the provisions and endorsements set forth in **Section 8.4.**, the fire and casualty insurance described herein shall contain the following provisions: (i) waiver of subrogation by the insurer as to any claims against the Association, any officer, Director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and (ii) provision that the coverage will not be prejudiced by act or neglect of one or more Owner when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

8.1.2 Public Liability. The Board shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board may, from time to time, determine to be customary for projects similar in construction, location and use to any Common Areas, and customary for the activities and obligations of property owners' associations for projects similar to the Subdivision, covering each member of the Board, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and out of the activities of the Association, provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof. Such insurance shall include endorsements covering cross-liability claims of one insured against another, including the liability of the Association and/or the Owners as a group to a single Owner. The Board shall review such limits annually. Until the first meeting of the Board following the initial meeting of the Owners, such public liability insurance shall be in amounts of not less than \$1,000,000 per occurrence for claims for bodily injury and property damage.

8.1.3 Fidelity Coverage. The Board shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, Directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association, in an amount determined by the Board in its discretion. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

8.1.4 Such other insurance coverages, including flood insurance and worker's compensation, as the Board shall determine, from time to time, to be necessary or desirable.

Section 8.2. Premium Expense. Premiums upon insurance policies purchased by the Board shall be paid by the Board and charged as a common expense to be collected from the Owners pursuant to ARTICLE VI.

Section 8.3. Special Endorsements. The Board shall make diligent effort to secure insurance policies that will provide for the following:

8.3.1 recognition of any insurance trust agreement entered into by the Association;

8.3.2 coverage that may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least forty-five (45) days prior written notice to the named insured, any insurance trustee and all Mortgagees; and

8.3.3 coverage that cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Owner or any Mortgagee.

Section 8.4. General Guidelines. All insurance policies purchased by the Board shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "A-VII" or better by the current issue of A.M. Best's Insurance Reports. All Insurance policies shall be written for the benefit of the Association and shall be issued in the name of, and provide that all proceeds thereof shall be payable to, the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance. The property and public liability insurance policies shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association, the Owners or the Mortgagees; (2) loss payments are contingent upon action by the carriers, Directors, policy holders or Members; or (3) there are limiting clauses (other than insurance conditions) which could prevent Owners or Mortgagees from collecting the proceeds.

ARTICLE IX

ARCHITECTURAL CONTROL COMMITTEE

Section 9.1. General. Notwithstanding anything contained in this Declaration to the contrary, no construction activity of any type, including, without limitation, grading or site preparation on any Lot, erection of Improvements or exterior additions, no structures or fences, alterations or

painting of the exterior surface with a color or shade of color different than that originally painted by a Builder to any improvement situated upon the Property, or any cutting of "mature trees" on any Lot, shall be commenced, erected or maintained, until all the following conditions have been satisfied: (a) an application for approval has been submitted to the ACC; (b) the ACC has given written approval for the plans and specifications for the Improvements, the location of such Improvements, and the commencement of construction, all in accordance with the terms and requirements in the Guidelines; (c) the fees set forth in or contemplated by this ARTICLE IX have been paid in full by the Owner; and (d) all applicable permits required by the Zoning and Subdivision Ordinances shall have been obtained from the Town of Indian Trail. The provisions of this ARTICLE IX shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant or any Builder on any Lot or upon any of the Common Areas. Declarant and/or the Association may delegate to the ACC any powers or authority reserved or granted to it under this ARTICLE IX.

Section 9.2. Composition of ACC. Until such time as the Board appoints an ACC, the Board or any designated members thereof shall constitute the ACC so long as Declarant owns any Lot or other portion of the Property, Declarant shall appoint any members of the ACC. When Declarant no longer owns any Lot or other portion of the Property or at such earliest date as Declarant releases its right to appoint the members of the ACC, the Board shall thereafter have the right to appoint the members of the ACC. If the Board elects to appoint the ACC, the three (3) members of the ACC shall be appointed annually until such time as the Board elects to assume the duties of the ACC. The members of the ACC need not be Lot Owners and may be members of the Board. In the event of the death or resignation of any member of the ACC, the party or body then having the authority to appoint members to the ACC shall have full authority to designate and appoint a successor. Members of the ACC may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members. The ACC shall have the right, power and authority to employ and/or use the services of any architects, engineers or other professionals as it deems necessary or advisable, in its sole discretion to carry out its duties and obligations as described in this ARTICLE IX.

Section 9.3. Architectural Guidelines.

9.3.1 The ACC may, from time to time, publish, promulgate and amend the Guidelines. The Guidelines shall be explanatory and illustrative of the general intent of the ACC with respect to the construction of certain Improvements on Lots and are intended as a guide to assist the ACC in reviewing plans and specifications for Improvements. The Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications (for the construction of Improvements) to the ACC and the fees to be imposed by the ACC, as more specifically described in **Section 9.7**. In any event, the Guidelines shall not be binding upon the ACC, may be revised and amended at any time by the ACC, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction of Improvements) submitted to the ACC for approval. The ACC

may issue and amend the Guidelines, from time to time, and may publish and promulgate different Guidelines for different phases, sections or portions of the Property.

Section 9.4. Enforcement.

9.4.1 It is Declarant's intent that the architectural control provisions of this Declaration and any Supplemental Declarations are to permit control of the architectural design and to establish quality standards for construction in the Development and to help preserve values of properties in the Subdivision. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Lot Owners in the Subdivision and to Declarant, and to the values of their respective properties in the Subdivision, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this ARTICLE IX by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants to the ACC, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determining whether any construction of any Improvement violates any approval by the ACC, the Guidelines, this Declaration or any Supplemental Declaration, as amended.

9.4.2 The Association may require any Owner to remove or restore nonconforming or unapproved Improvements if such Improvements were commenced or constructed in violation of this ARTICLE IX. In addition, the Association may, but has no obligation to cause such restoration, demolition and removal to be performed and/or to levy fines for such nonconforming or unapproved Improvements to levy the cost and/or fine as a Special Individual Assessment against the Lot or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine whether any constructed Improvement was approved or conforms to the Guidelines, to remove any unapproved Improvement, or otherwise to remedy a violation to the Guidelines, the Association shall be entitled to recover court costs, reasonable attorneys' fees and expenses incurred by the Association and/or the ACC, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot upon which such Improvement was commenced or constructed.

Section 9.5. Failure of the ACC to Act. If the ACC fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements of the Guidelines and this Declaration or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof, and provided such submittal was a full and complete submittal, in accordance with the Guidelines, of all items that were to have been submitted to the ACC, the Lot Owner shall give written notice to the ACC asking it to act on the submittal. If the ACC shall again fail to approve or disapprove of such plans, specifications and other submittals within ten (10) days after receipt of the Lot Owner's written request, the ACC shall

be deemed to have approved such conforming plans and specifications and other submittals; provided that the ACC has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration or any Supplemental Declaration. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the ACC may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject or approve the balance.

Section 9.6. Variances. Upon submission of a written request, the ACC may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Supplemental Declaration from which a variance is permitted. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community, shall not materially change the scheme of restrictions herein set forth and, if any variance is required by the Zoning and Subdivision Ordinances, such variance shall have been obtained from the Town of Indian Trail. Written requests for variances shall be deemed to be disapproved in the event the ACC has not expressly approved such request in writing within thirty (30) day of the submission of such request. No member of the ACC shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the ACC's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Supplemental Declaration against any other Owner.

Section 9.7. Fees Required by the ACC. The ACC, in its sole discretion, may require that each Owner submitting plans and specifications for Improvements pay one or more fees to the ACC or to Declarant as a condition to commencement of construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof shall be established by, and may be increased, from time to time, by the ACC and shall be set forth in the Guidelines.

Section 9.8. No Construction Without Payment of Fees. Plans and specifications for Improvements to be constructed on a Lot or other portion of the Property shall not be deemed to have been properly submitted unless and until any and all fees required by the ACC to be paid in connection with such Improvements, as provided in **Section 9.7.** shall have been paid to the ACC or Declarant, as required by the Guidelines .

Section 9.9. Notices and Submittals. Notices and submittals to the ACC shall be in accordance with the notice provisions set forth, from time to time, in the Guidelines.

Section 9.10. Limitation of Liability. No member of the ACC shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this ARTICLE IX. Neither the ACC, the member thereof, the Association, Declarant, nor any officer, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other

submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and Specifications by the ACC shall not be deemed or construed as a representation or warranty of the ACC, Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations; (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications: and/or (iii) any responsibility or liability therefor is expressly hereby disclaimed. Every Owner who submits plans and specifications agrees to not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 9.11. Miscellaneous. Members of the ACC may be compensated for their services, in the sole discretion of Declarant or the Board. The Association shall reimburse members of the ACC for reasonable out-of-pocket expenses associated with their services. All costs, expenses and reasonable attorneys' fees of the ACC, including those incurred in connection with the exercise of their enforcement powers, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, reasonable attorneys' fees and expenses in accordance with **Section 9.4.**

ARTICLE X

RIGHTS OF MORTGAGEES

Section 10.1. Approval of Mortgagees. Unless at least seventy-five (75%) of the Mortgagees holding Mortgages on Lot located within the Subdivision then subject to the full application of this Declaration have given their prior written approval, the Association shall not:

10.1.1 except as otherwise specifically provided herein, by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or Improvements thereon which are owned, directly or indirectly, by the Association; provided, however, the granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this provision;

10.1.2 except as otherwise specifically provided herein, change the method of determining the

obligations, Assessments, dues or other charges which may be levied against an Owner;

- 10.1.3** fail to maintain fire and extended coverage insurance on insurable Improvements in any Common Areas in the Subdivision (with the exception of Public Roads) on a current replacement cost basis in an amount not less than 100% of the insurable value as set forth in ARTICLE VIII; or
- 10.1.4** use the proceeds of any hazard insurance policy covering losses to any part of any Common Area for a purpose other than the repair replacement or reconstruction of the damaged Common Areas.

Section 10.2. Additional Rights. Provided that a Mortgagee has given written notice to the Association as hereafter provided, a Mortgagee shall have the following rights:

- 10.2.1** to be furnished at least one copy of the financial statement and report of the Association within ninety (90) days following the end of each fiscal year;
- 10.2.2** to be given notice by the Association of any meeting of the Association's membership, and to designate a representative to attend all such meetings;
- 10.2.3** to be given prompt written notice of default under the Declaration, the Bylaws or any rules and regulations promulgated by the Association by any Owner owning a Lot encumbered by a Mortgage held by the Mortgagee, such notice to be sent to the principal office of the Mortgagee or the place which it designates in writing;
- 10.2.4** to be given prompt, written notice of any casualty loss to the Common Areas, or loss by eminent domain, condemnation or other taking of (i) the Common Areas or (ii) any Lot encumbered by a Mortgage held by the Mortgagee;
- 10.2.5** to be given prompt written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 10.2.6** to be given prompt written notice of any action which requires the consent of any or all of the Mortgagees as specified herein.

Whenever any Mortgagee desires the provisions of this **Section 10.2** to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address, identifying the Lot or Lots upon which any such Mortgagee holds any Mortgage or identifying any Lot owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it and which notice shall designate the place to which notices are to be given by the Association to such Mortgagee. In the event a Mortgagee fails to give written notice, as provided in the immediately preceding sentence, the Mortgage shall not be entitled to the benefits of this **Section 10.2**.

Section 10.3. Failure to Respond Deemed Approval. The failure of any Mortgagee to respond within thirty (30) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for approval of an addition or amendment to this Declaration wherever Mortgagee approval is required shall constitute an implied approval by that Mortgagee of the proposed addition or amendment .

Section 10.4. Books and Records. Any Mortgagee will have the right to examine the books and records of the Association during any reasonable business hours.

Section 10.5. Payment of Taxes and Insurance Premiums. The Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against the Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making such payments shall be promptly reimbursed by the Association.

ARTICLE XI

CONDEMNATION

Section 11.1. Partial Taking: Without Direct Effect on Lots. If part of the Property shall be taken or condemned by any authority having the power of eminent domain, such that no Lot is taken, all compensation and damages for and on account of the taking of the Common Areas, exclusive of compensation for consequential damages, to certain affected Lots, shall be paid to the Board in trust for all Owners and their Mortgagees according to the loss or damages to their respective interests in such Common Areas. The Association, acting through the Board, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Areas, without limitation on the right of the Owners to represent their own interests. Each Owner, by acceptance of a deed to a Lot, hereby appoints the Board as attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Areas. Such proceeds shall be used to restore the Common Areas with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board, in its sole discretion. Owners whose Lots are specifically affected by the taking or condemnation shall not be prevented from joining in the condemnation proceedings and petitioning on their own behalf for consequential damage relating to loss of value of the affected Lots or Improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Areas. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Lots without such allocation, the award shall be divided between affected Owners and the Association, as their interests may appear, by the Board, in its sole discretion.

Section 11.2. Partial or Total Taking: Directly Affecting Lots. If part or all of the Property shall be taken or condemned by any authority having the power of eminent domain, such that any Lot or a part thereof (including specific easements assigned to any Lot) is taken, the Association shall have the right to act on behalf of the Owners with respect to Common Area as provided in **Section 11.1** and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lots. All compensation and damages for and on account of the taking of any one or more of the Lots or Improvements, fixtures or personal property thereon, shall be paid to the Owners of the affected Lots and their Mortgagee, as their interests may appear. If all of the Property shall be taken such that the Association no longer has reason to exist and shall thereafter be dissolved and/or liquidated, all compensation and damages for and on account of the taking of the Common Areas shall be distributed with the other assets of the Association in accordance with the Articles of Incorporation.

Section 11.3. Notice to Mortgagees. A notice of any eminent domain or condemnation proceeding shall be sent to all Mortgagees who have served written notice upon the Association in accordance with **Section 10.2**.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1. Enforcement. By recording this Declaration, Declarant is confirming its desire to maintain a high standard in the appearance and quality of the Subdivision. Although damages would be difficult to measure, the failure of any of the Owners or the Association to abide by the terms, covenants and restrictions contained in this Declaration would result in irreparable damage to Declarant and its reputation. Accordingly, Declarant, during the term of this Declaration as set forth in **Section 12.4**, as well as the Association or any Owner or Owners, shall have the right, but not the obligation, to enforce any or all of the restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration by proceeding at law or in equity against any person or persons, violating or attempting to violate any such restriction, condition, covenant, reservation, lien or charge, either to restrain violation thereof or to recover damages therefor. Declarant, the Association and each Owner shall have all appropriate remedies at law or in equity to enforce the provisions of this Declaration and the Bylaws and any duly authorized rules and regulations governing the Subdivision.

In addition, the Association and the Owners hereby mutually covenant and agree that they shall exercise their power of enforcement hereunder in order to maintain a first class Subdivision in appearance and quality, and that they shall, upon the request of Declarant, enforce any restriction, condition, covenant or reservation contained in this Declaration deemed by Declarant, in its sole discretion, to have been violated, using all remedies available to them at law or in equity. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so at any time thereafter. Declarant hereby reserves the right and easement, but not the obligation, to go upon any portion of the Common Areas at any time in order to repair and maintain such Common Areas where needed, in Declarants' sole discretion, to bring such Common Areas within the standards required by Declarant. If Declarant goes upon the Common Areas to perform maintenance and/or repairs for such purpose, the Association hereby agrees to reimburse Declarant in full for the cost of such maintenance and/or repairs, upon receipt of a statement for such costs from Declarant, for maintenance and/or repair of the Common Areas.

Section 12.2. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall not affect any other provisions of this Declaration, which shall remain in full force and effect.

Section 12.3. Amendment.

12.3.1 Amendment by Owners.

The covenants, conditions, and restrictions of this Declaration may be amended at any time and from time to time by an instrument signed by Owners holding two-thirds (2/3) of votes appurtenant to the Lots which are then subject to this Declaration; provided,

however, that such amendment must be consented to by Declarant so long as Declarant owns any Lot in the Subdivision or any Additional Property. Any such amendment shall not become effective until recorded in the office of the Register of Deeds, Union County, North Carolina. Notwithstanding the foregoing, the consent of a majority of the Owners of Lots, plus the written consent of Declarant, shall be required to reduce the land in the Subdivision, to withdraw any portion of the Property from the requirements of this Declaration, or to restrict or revoke Declarant's right of enforcement as provided for in **Section 12.1.**

12.3.2 Amendment by Declarant.

Declarant may, at Declarant's option, amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association or other similar agency. Declarant, without obtaining the approval of any other person or entity, may also make (a) amendments or modifications which are correctional in nature and do not involve a change which materially adversely affects the rights, duties or obligations specified herein; and/or (b) any addition or amendment that Declarant is authorized to make under other sections of this Declaration, including, without limitation, **Section 2.2** and **Section 3.2.6.**

Section 12.4. Term. The covenants and restrictions of this Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty (20) years from the date this Declaration is recorded; after which time, covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then current Owners of the Lots, plus Declarant, has been recorded, agreeing to terminate said covenants and restrictions in whole or in part. Provided, however, that the residential use restrictions set forth in **Section 7.1** shall run with the land and shall be binding upon all parties and all persons claiming under them in perpetuity.

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IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officer as of the day and year first above written.

ROGERS ROAD, LLC, a North Carolina
limited liability company

By:
Its: Manager

STATE OF NORTH CAROLINA COUNTY OF MECKLENBURG

COUNTY OF MECKLENBURG

I, _____, a Notary Public of _____, County and State of North Carolina, do hereby certify that Woodard E. Fanner, Jr., (the "Signatory"), Manager of Rogers Road, LLC, a North Carolina limited liability company, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

____(I have personal knowledge of the identity of the Signatory); or
____(I have seen satisfactory evidence of the Signatory's identity, by a current state
or federal identification with the Signatory's photograph in the form of:

(check one of the following)

____a driver's license or
____in the form of____); or
____(a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official seal this _____ day of December, 2005.

Notary Public

Print: Name: Brenda L Klutz

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires:_____

[NOTARY SEAL] **(MUST BE FULLY LEGIBLE)**

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officer as of the day and year first above written.

ROGERS ROAD, LLC, a North Carolina limited liability company

By: Woodard E. Farmer, Jr.
Its: Manager

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Brenda L. Kluttz, a Notary Public of Cabarrus, County and State of North Carolina, do hereby certify that Woodard E. Farmer, Jr., (the "Signatory"), Manager of Rogers Road, LLC, a North Carolina limited liability company, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

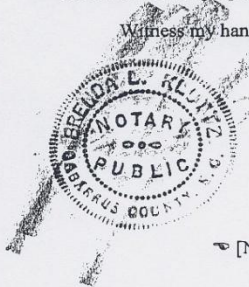
I certify that the Signatory personally appeared before me this day, and
(check one of the following)

(I have personal knowledge of the identity of the Signatory); or
 (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)
 a driver's license or
 in the form of _____); or
 (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 19th day of December, 2005.

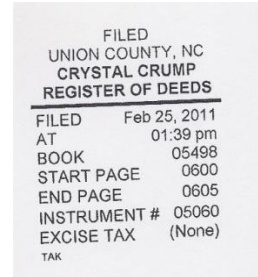


Brenda L. Kluttz
Notary Public
Print Name: Brenda L. Kluttz
[Note: Notary Public must sign exactly as on notary seal]
My Commission Expires: 5-28-2010

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

2011 Amendments
to Covenants, Conditions and Restrictions
for The neighborhood Association of Pondside, Inc.

January 19th 2011



Prepared by and Mail to: Steven E. Black, Forman Rossabi Black PA
P.O. Box 41027, Greensboro, NC 27404

NORTH CAROLINA

AMENDMENT TO DECLARATION OF
COVENANTS CONDITIONS AND
RESTRICTIONS FOR PONDSIDE

UNION COUNTY

(Marketed as: The Villas at Sun Valley)

THIS AMENDMENT TO DECLARATION is made this the 19th day of January, 2011, by The Neighborhood Association of Pondside, Inc., hereinafter referred to as the "Association" and Rogers Road, LLC, hereinafter referred to as the "Declarant".

WITNESSETH THAT

WHEREAS, Rogers Road, LLC, a North Carolina limited liability company, caused the Declaration of Covenants Conditions and Restrictions for Pondside to be recorded on December 20, 2005 in Book 4017, Page 430 of the Union County Register of Deeds (hereinafter the "Declaration"); and

WHEREAS, Article XII, Section 12.3 of the Declaration provides that the Declaration may be amended at any time by an instrument signed by owners holding two-thirds (2/3) of the votes appurtenant to the Lots which are subject to the Declaration; and

WHEREAS, the required assent has been obtained to amend the Declaration. The instrument containing said signatures may be found among the books and records of the Association. The Officers of the Association executing this Amendment have certified that the requisite Owner approval has been obtained; said Certification can be found attached hereto as Exhibit A.

NOW THEREFORE, the Declaration of Covenants, Conditions and Restrictions for Pondsides shall be amended as follows:

Article VII, Section 7.11 is deleted in its entirety and is replaced with the following:

7.11 Walls, Fences and Hedges. No fence or wall of any kind may be constructed on any Lot unless and until the ACC has given it prior written approval of the color, size, design, materials, and location for such fence or wall. Without limiting the foregoing sentence, (a) all fences shall be constructed of black wrought iron or aluminum, provided, that stone or brick columns supporting fence sections may be permitted; (b) no chain link or stockade style fences are permitted; (c) no wood or picket fences are permitted; (d) no fence or support column shall be over four (4) feet in height; and (e) no fence or wall of any kind may be erected nearer the front Lot line of a Lot than the front face of the dwelling located on such Lot. In the case of a corner Lot, no side yard fence shall be located nearer the street than the side of the house facing the side street line. Provided, however, that the restrictions described in this Section 7.11 shall not apply to any Improvements originally installed by the Declarant on any Common Area.

Article VII, Section 7.20 is deleted in its entirety and is replaced with the following:

7.20 Lawn Furniture and Statues. No lawn furniture shall be maintained in the front or side yards of any Lot unless shielded from view by landscaping, a fence or a wall approved in advance in writing by the ACC. Lawn ornaments and potted plants are allowed in the foundation planting beds (not around trees). Two (2) potted plants are permitted at the garage entrance on driveways. Seasonal holiday lawn ornaments are permitted. However, Holiday lighting must be removed within two (2) weeks after the holiday. Lawn ornaments and potted plants are subject to additional guidelines as the ACC may issue and amend from time to time.

The following is added to Article VII, Section 7:

7.24 Leasing. The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of the Section.

(a) **Definition** "Leasing" for purposes of the Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the title Owner for which the Owner receives consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

(b) **Leasing Provisions.** Leasing of Lots shall be governed by the following provisions:

i. **General.** Lots may be leased only in their entirety; no fraction or portion may be

leased without prior written approval from the Board of Directors and issuance of a leasing permit as set forth below. All leases shall be in writing. Within seven (7) days after executing a lease agreement for the lease of a Lot, the Lot Owner shall provide the Board with a copy of the lease and the name of the lessee and the names of all other people to occupy the Lot. The Lot Owner shall provide the lessee copies of the Declaration, Bylaws and the rules and regulations.

ii. Leasing Permits. An Owner's request for a leasing permit shall be approved if current outstanding leasing permits have not been issued for more than 10% of the total Units in the Community. A leasing permit shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the unit to a third party (excluding sale or transfers (a) to Owner's spouse, (b) a person cohabitating with the Owner, and (c) a corporation, partnership, or company or legal entity in which the Owner is a principal); (2) the failure of the Unit Owner to lease his or her Unit within 90 days of the leasing permit having been issued; or (3) the failure of a Unit Owner to have his or her Unit leased for any consecutive 90-day period thereafter. If leasing permits have been issued for more than 10% of the Units, no additional leasing permits shall be issued until the number of outstanding current leasing permits fall below 10% of the total Units in the Community. Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued the same if they desire when the number of current outstanding leasing permits falls to less than 10% of the total Units in the Community.

iii. Compliance With Declaration, Bylaws, and Rules and Regulations, Use of Common Property, and Liability for Assessments. Any lease of a Lot shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each lessee by occupancy of a Lot, covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot:

a. Compliance with Declaration, Bylaws, and Rules and Regulations.

The lessee shall comply with all provisions of the Declaration, Bylaws and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure compliance with the foregoing. The Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall be responsible for all violations by such Occupants. In the event that the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of such violation shall be given to the Owner and such fine shall

be imposed against the Owner. Unpaid fines shall constitute a lien against the Lot when a Claim of Lien is filed with the Clerk of Court.

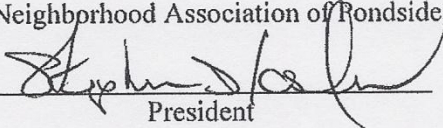
Any violation of the Declaration, Bylaws or rules and regulations by the lessee, any Occupant, or any person living with the lessee, is deemed to be in default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law.

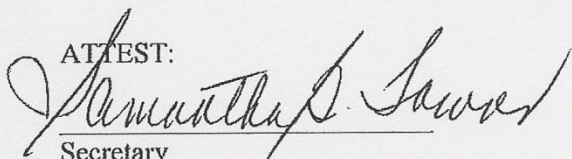
b. Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities.

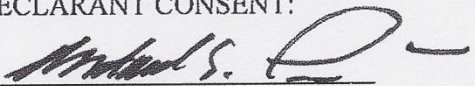
c. Applicability of this Section. This Section shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

7.25 Lighting. Architectural lighting, flood lights, motion or other security lighting and security cameras are permitted around the house so long as the same does not unreasonably interfere with the enjoyment of other Lot Owners. Seasonal holiday decorative lights are permitted. However, Holiday lighting must be removed within two (2) weeks after the holiday.

This the 19th day of January 2011.

The Neighborhood Association of Pondside, Inc.
By: 
President

ATTEST:

Secretary
The Neighborhood Association of Pondside, Inc

DECLARANT CONSENT:

Rogers Road, LLC
By: Woodard E. Farmer, Jr.
Manager/Member

**2022 Amendments
to Covenants, Conditions and Restrictions**

for The neighborhood Association of Pondside, Inc.

September 14, 2022

Prepared by:
Sellers, Ayers, Dortch & Lyons, P.A.
310 South McDowell Street, Suite 410
Charlotte, N.C. 28204
(CAJ 30973.0000)

STATE OF NORTH CAROLINA

COUNTY OF UNION

**CERTIFICATION OF AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR PONDSIDE [Marketed as: The Villas at Sun
Valley]**

This **Certification of Amendment to the Declaration of Covenants, Conditions and Restrictions for Pondside [Marketed as: The Villas at Sun Valley]** (“Amendment”) is made pursuant to Article XII, of the Declaration of Covenants, Conditions and Restrictions for Pondside [Marketed as: The Villas at Sun Valley] recorded in Book 4017 at Page 430 of the Union County Public Registry on December 20, 2005, as amended and supplemented by instruments recorded thereafter (“Declaration”), and is effective upon recordation in the Union County Public Registry.

Statement of Purpose

The Declaration provides in Article XII Section 12.3.1 that the Declaration may be amended by an instrument signed by Owners holding two-thirds (2/3) of votes appurtenant to the Lots which are then subject to this Declaration. In accordance with the requirements of the Declaration, the following Amendments were approved by Owners holding at least two-thirds (2/3) of the votes appurtenant to the Lots.

NOW, THEREFORE, with the Owners holding at least two-thirds (2/3) of the votes appurtenant to the Lots signing this instrument, the Declaration is amended as follows:

1. Article VII RESTRICTIONS Section 7.24 Leasing shall hereby be modified to add subsection (b) (iv) and (v) as follows:

“(b)(iv) Waiting Period. No Owner who acquires title to a Lot on or after the date this amendment is recorded shall be permitted to lease the Lot until the Owner lives in the Lot as their primary residence for at least twelve (12) consecutive months after the recording date of the deed conveying said Lot to such owner (“Waiting Period”). In the event that any Lot is leased for any period of time in violation of this mandatory twelve (12) month Waiting Period, the Waiting Period shall be immediately tolled and any time which elapses while the unpermitted lease remains in effect shall not count toward satisfaction of the Waiting Period described herein. Notwithstanding anything else to the contrary, however, the Waiting Period shall not apply to any person or entity who acquires title to a Lot by bequest or inheritance.

(b)(v) Minimum Lease Term. If leased, the Lot must be leased for a minimum period of twelve (12) months (“Minimum Lease Term”). The Lot may be leased only to tenants who intend to occupy the Lot for the Minimum Lease Term. No Lot may be leased for any type of periodic tenancy, (e.g., “week to week”, “month to month”, “year to year”, etc.). Any extension of a lease may be permitted but must be for the Minimum Lease Term unless the Board grants an exception in writing. No Owner may advertise the Lot for lease for less than the Minimum Lease Term.”

0. Except as herein specifically amended, the terms, provisions, conditions, and restrictions contained in the Declaration shall remain unchanged and as previously set forth in instruments recorded in the Union County Public Registry.

[SIGNATURE TO FOLLOW]

Owner Signature Page for CERTIFICATION OF AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PONDSIDE [Marketed as: The Villas at Sun Valley]

IN WITNESS WHEREOF the undersigned Owners hereby certify their approval of these amendments in accordance with the provisions of the Declaration.

By: Patrick Chang
Print Owner Name: PATRICK CHANG
Property Address: 106 PINE LAKE DR

By: Roberta Chang
Print Owner Name: ROBERTA CHANG
Property Address: 106 Pine Lake Dr, Moore, NC

State of North Carolina

County of Union

I, the undersigned, a notary public for the County and State aforesaid, certify that Patrick Chang, personally appeared before me this day, and acknowledged to me that he/she signed the foregoing document.

Witness my hand and seal this the 24 day of June, 2022.



Nicholas Newberry
Notary Public
My Commission Expires: 8/18/2024

State of North Carolina

County of Union

I, the undersigned, a notary public for the County and State aforesaid, certify that Roberta Chang, personally appeared before me this day, and acknowledged to me that he/she signed the foregoing document.

Witness my hand and seal this the 24 day of June, 2022.



Nicholas Newberry
Notary Public
My Commission Expires: 8/18/2024

12000200 50627CMP-3

EXHIBIT A
TO
DECLARATION
FOR
PONDSIDE

ADDITIONAL PROPERTY

TRACT 1:

Being all that tract or parcel of land located in Sandy Ridge Township, Union County, North Carolina, and being more particularly described as follows:

BEGINNING at an iron pin set #5 rebar in the southern margin of the right-of-way of Rogers Road, said iron pin set being a corner of the Common Open Space lying to the east of Lots 73 through 77 of Cornerstone Subdivision, Phase 2A ("Cornerstone, Phase 2A"), all as shown on a map thereof recorded in Flat Cabinet F, Page 907 in the Union County Public Registry (hereinafter the "Registry"); thence, from said point of Beginning, N. 34-18-36 W. 33.90 feet to a point in the center line of the right-of-way of Rogers Road; thence, with and along the center line of the right-of-way of Rogers Road, N. 83-25-45 E. 85.78 feet to a point, a corner of the property of Allen Keith Biggers and *wife* (now or formerly) as described in Deed Book 1752, Page 481 in the Registry; thence, with and along the boundary line of the property of Allen Keith Biggers and wife, the following four (4) courses and distances: (1) S. 34-55-37 E. 379.64 feet (passing a point in the southern margin of the right-of-way of Rogers Road at 34.09 feet) to a point; (2) S. 25-22-28 E. 459.30 feet to a point; (3) S. 04-04-11 W. 141.93 feet to a point; and (4) N. 86-14-51 E. 372.47 feet to a point in the boundary line of the property of Teens Williams and Tom Marsh Williams, Jr. (now or formerly) as described in Deed Book 770, Page 164 in the Registry; thence, with and along the boundary line of the property of Tie= Williams and Tom Marsh Williams, Jr., the following two (2) courses and distances: (1) S. 08-25-03 E. 811.87 feet to an iron pin set #5 rebar; and (2) S. 52-28-42 E. 180.15 feet to a #4 mbar; thence, with and along a line in a Duke Power right-of-way and continuing with and along the northern boundary line of Lots 241, 242, 243, 244, 245, 246 and 247 of Cornerstone Subdivision, Phase 2D ("Cornerstone, Phase 2D") as shown on a map thereof recorded in Plat Cabinet G, Page 639 in the Registry, S. 74-54-12 W. 510.92 feet to an iron pipe at the intersection of the boundary line of Lot 247 of Cornerstone, Phase 2C and a corner of the Common Area of Cornerstone Subdivision, Phase 2C ("Cornerstone, Phase 2C") as shown on a map thereof recorded in Plat Cabinet G, Page 536 in the Registry; thence, with and along the eastern boundary line of the Common Area and Lots 267 and 268 of Cornerstone, Phase 2C, N. 15-03-58 W. 329.79 feet to a #4 rebar, a corner of Lot 268 of Cornerstone, Phase 2C; thence, with and along the northern boundary line of Lots 268, 269, 270, 271, 272, 273, 274, 275, 276 and 277 of Cornerstone, Phase 2C, S. 75-02-33 W. 783.09 feet to an iron pin set #5 rebar in the boundary line of the Common Open Space lying to the east of Lots 301 through 309 of Cornerstone Subdivision, Phase 3B ("Cornerstone, Phase 3B"), all as shown on a map thereof recorded in Plat Cabinet H, Page 133 in the Registry; thence, with and along the Common Open Space of Cornerstone, Phase 3B, N. 14-57-33 W. 832.25 feet to an iron pin set #5 rebar in the boundary line of Lot 65 of Cornerstone, Phase 2A; thence, with and along the southern boundary line of Lots 65 and 66 of Cornerstone, Phase 2A, N. 78-28-01 E. 99.43 feet to an iron pin set #5 rebar in the boundary line of Lot 66 of Cornerstone, Phase 2A; thence, with and along the southwestern boundary line of Lots 66, 67, 68, and 69 of Cornerstone, Phase 2A, N. 46-46-01 E. 250.00 feet to an iron pin set #5 rebar in the boundary line of Lot 69 of Cornerstone, Phase 2A; thence, with and along the southwest= boundary line of Lots 69, 70, 71, 72 and the Common Open Space of Cornerstone, Phase 7A, N. 44-00-49 E. 567.01 feet to a #4 rebar, a corner of the Common Open Space of Cornerstone, Phase 2A; thence, with and along the northeastern boundary line of the Common Open Space of Cornerstone, Phase 2A, N. 34-18-36 W. 402.25 feet to an iron pin set #5 rebar, the point and place of BEGINNING, containing 30.749 acres, 0.059 acre within the right-of-way of Rogers Road, more or less, all as shown on "A Boiaidary I Topographic Survey For Schreiner Development", prepared by Hugh E. White, Jr., NCRLS and SCRLS, Carolina Surveyors, Inc., dated July 1, 2004.

TRACT 2:

Being all that tract or parcel of land located in Sandy Ridge Township, Union County, North Carolina, and being more particularly described as follows:

(continued next page)

EXHIBIT A
TO
DECLARATION
FOR
PONDSIDE

ADDITIONAL PROPERTY

(cont'd)

To locate the point and place of Beginning, commence at an iron pin, set #5 mbar in the southern margin of the right-of-way of Rogers Road, said iron pin set also being a corner of the Common Open Space lying to the east of Lots 73 through 77 of Cornerstone Subdivision, Phase 2A, all as shown on a map thereof recorded in Plat Cabinet F, Page 907 in the Union County Public Registry (hereinafter the "Registry"); thence, with and along the southern margin of the right-of-way of Rogers Road, N. 83-25-45 E. 86.19 feet to a point, the point and place of BEGINNING; thence N. 34-55-37 W. 34.09 feet to a point in the center line of the right-of-way of Rogers Road; thence, with and along the center line of the right-of-way of Rogers Road, N. 83-25-45 E. 644.29 feet to a point; thence S. 08-25-03 E. 30.02 feet to an iron pin set at the intersection of the southern margin of the right-of-way of Rogers Road and the boundary line of the property of Trena Williams and Tom Marsh Williams Jr. (now or formerly) as described in Deed Book 770, Page 164 in the Registry; thence, with and along the boundary line of the property of Trees Williams and Tom Marsh Williams, Jr., S. 08-25-03 E. 897.14 feet to a point in the boundary line of the property of Judy B. Richardson (now or formerly) as described in Deed Book 1752, Page 484 in the Registry; thence, with and along the boundary line of the property of Judy B. Richardson, the following four (4) courses and distances: (1) S. 86-14-51 W. 372.47 feet to a point; (2) N. 04-04-11 E. 141.93 feet to a point (3) N. 25-22-28 W. 459.30 feet to a point; and (4) N. 34-55-37 W. 345.55 feet to a point, the point and place of BEGINNING, containing 9.579 acres, 0.439 acre within the right-of-way of Rogers Road, more or less, all as shown on "A **Comilary** / Topographic Survey For Schreiner Development", prepared by Hugh E. White, Jr., NCRLS and SCRLS, Carolina Surveyors, Inc., dated July 1, 2004.

LESS AND EXCEPT the property described on that certain plat entitled "PONDSIDE-PHASE 1 MAP 1 (VILLAS OF SUN VALLEY)" and recorded in Plat Cabinet J, File 39, Union County Public Registry.

EXHIBIT B

**ARTICLES OF INCORPORATION
OF
THE NEIGHBORHOOD ASSOCIATION OF PONDSIDE, INC.
A NONPROFIT CORPORATION**

The undersigned natural person of the age of eighteen (18) years or more does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a nonprofit corporation under and by virtue of the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Nonprofit Corporation Act" and the several amendments thereto, and to that end does hereby set forth:

1. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Pondsides, together with all supplements or amendments thereto (the "Declaration"), which Declaration shall be recorded in the Office of the Register of Deeds for Union County, North Carolina.
2. The name of the Corporation is THE NEIGHBORHOOD ASSOCIATION OF PONDSIDE, INC. (the "Association").
3. The period of duration of the Association shall be perpetual.
4. The purposes for which the Association is organized are:
 - (a) to manage, maintain, operate, care for and administer the Subdivision, including, but not limited to, the Common Areas and Public Roads as more particularly set forth in the Declaration;
 - (b) to enforce the covenants, restrictions, easements, charges and liens as provided in the Declaration and to fix, levy, assess, collect, enforce and disburse the charges and assessments created under the Declaration, all in the manner set forth in and subject to the provisions of the Declaration;
 - (c) to exercise all powers and privileges and perform all duties and obligations of the Association as set forth in the Declaration;
 - (d) to do any and all other lawful things and acts that the Association from time to time, in its discretion, may deem to be for the benefit of the Development and the Owners and inhabitants thereof or advisable, proper or convenient for the promotion of the peace, health, comfort, safety and general welfare of the Owners and inhabitants thereof; and
 - (e) to exercise all powers provided in Chapter 55A of the General Statutes of North Carolina in furtherance of the above-stated purposes.

5. The Association is not organized for pecuniary profit, nor shall it have any power to issue certificates of stock or pay dividends. No part of the net assets or earnings of the Association shall inure to the benefit of any private individual, firm or corporation.

6. The Association shall have Members which may be divided into such classes as shall be provided in the Bylaws, All Members shall be accepted, appointed, elected or designated in the manner provided in the Bylaws.

7. The address of the registered office of the Association is 401 South Tryon Street, Suite 3000, Charlotte, Mecklenburg County, North Carolina 28202, and the initial registered agent of the Association at such address is Woodard E. Farmer, Jr.

8. The address of the principal office of the Association is 403 Gilead Road, Huntersville, Mecklenburg County, North Carolina 28078.

9. The business and conduct of the Association shall be regulated by a Board of Directors who shall be elected in the manner and for the terms provided in the Bylaws. The number of directors constituting the initial Board of Directors shall be three, and the names and addresses of the persons who are to serve as the initial Directors are:

<u>Names</u>	<u>Address</u>
Stephen M. Schreiner	403 Gilead Road, Suite H Huntersville, NC 28078
Woodard E. Farmer, Jr,	401 South Tryon St., Suite 3000 Charlotte, NC 28201
Susan L. Foster	403 Gilead Road, Suite H Huntersville, NC 28078

9. The incorporator of this Association is Woodard E. Farmer, Jr., and his address is 401 South Tryon Street, Suite 3000, Charlotte, Mecklenburg County, North Carolina 28202.

10. In the event of a dissolution and/or liquidation of the Association, all of the residual assets of the Association shall be distributed to such organizations that are exempt under §501(c)(3) of the Internal Revenue Code of 1986 or corresponding sections of any prior or future Internal Revenue Code at the time of dissolution as shall in the judgment of the Directors, be most likely to fulfill the purposes of the Association.

IN TESTIMONY WHEREOF, the undersigned has set his hand and seal this 4th day of November, 2005.

Woodard E. Farmer, Jr., Incorporator

EXHIBIT C
BYLAWS
OF
THE NEIGHBORHOOD ASSOCIATION OF PONDSIDE, INC.

ARTICLE 1

Section 1.1 Name. The name of the non-profit corporation is THE NEIGHBORHOOD ASSOCIATION OF PONDSIDE, INC. (the "Association").

Section 1.2 Location. The principal office of the Association shall initially be located in Mecklenburg County, North Carolina at 403 Gilead Road, Suite H, Huntersville, NC 28078. The registered office of the Association may be, but need not be, identical with the principal office.

ARTICLE 2

DEFINITIONS

All capitalized terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for Pondside executed by Rogers Road, LLC, and duly recorded in the Office of Register of Deeds of Union County, North Carolina (as supplemented and amended, from time to time, the "Declaration").

ARTICLE 3

MEETINGS OF MEMBERS

Section 3.1 Annual Meetings. The first annual meeting of the Members shall be held sometime during the months of March, April or May, 2006 as determined by a vote of the Board of Directors, and each subsequent regular annual meeting of the Members shall be held on or about the anniversary date of the first annual meeting, at a time to be determined by the Board. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 3.2 Special Meetings. Special meetings of the Members may be called at any time by the President of the Association, by the Board of Directors, or upon the written request of the Members who are entitled to vote at least ten percent (10%) of all of the votes appurtenant to the Lots.

Section 3.4 Place of Meetings. All meetings of the Members shall be held at such place within Union County, North Carolina or Mecklenburg County, North Carolina, as determined by the Board of Directors.

Section 3.5 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of the Secretary of the Association or other person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than ten (10) days nor more than sixty (60) days before the date of such meeting to each Member entitled to vote, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. The notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Section 3.6 Classes of Lots and Voting Rights. The voting rights of the Members shall be appurtenant to the ownership of Lots. There shall be two (2) classes of Lots with respect to voting rights:

(a) Class A Lots. All Lots shall be Class A Lots, except Class B Lots (as defined below). Each Class A Lot shall entitle the Owner(s) of the Lot to one (1) vote for each Class A Lot owned. When more than one person owns an interest (other than a leasehold, security interest or mortgage) in any Lot, all such persons shall be Members and their appurtenant 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 Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant and Builder that have not been conveyed to purchasers who are not affiliated with Declarant or Builder. Declarant and Builder shall be entitled to four (4) votes for each Class B Lot owned by them.

Section 3.7 Turnover Date. The Class B Membership shall cease and be converted to Class A Membership on the first to occur of the following events:

(a) when the number of votes in the Class A Membership exceeds the total number of votes outstanding in the Class B Membership; or

(b) upon the expiration of ten (10) years after the recordation of this Declaration;

or

(c) upon the election of Declarant, in its sole discretion, to terminate its Class B Membership and to convert the Class B Lots to Class A Lots. Any such election, to be effective, must be in writing and recorded in the Office of the Register of Deeds for Union County, North Carolina.

Section 3.8 Quorum. The presence at any meeting of Members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes appurtenant to the Lots shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws or applicable law. If however, such quorum shall not be 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 3.9 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 Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance of the applicable Member's Lot.

Section 3.10 Action by Members. Except as provided otherwise in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a vote of a majority of all votes entitled to be cast by all classes of Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be regarded as the act of the Members. Notwithstanding any term or provision herein, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by all classes of Members shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Development or any part thereof, or over the Declarant of any affiliate or subsidiary thereof, or (2) assert a claim against or sue Declarant. This provision shall not be amended without the written consent of Declarant.

Section 3.11 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 by such Member of the time and place thereof except where such 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 of 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 3.12. 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 persons 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 4

BOARD OF DIRECTORS

Section 4.1 Number. The business and affairs of the Association shall be managed by a Board of three (3) Directors, who shall be appointed by Declarant and who need not be Members of the Association. At the first annual meeting of the Members following the Turnover Date, a Board of five (5) Directors shall be elected in accordance with Section 4.5.

Section 4.2 Initial Directors. The initial Board of Directors shall be appointed by Declarant. The Board of Directors shall serve at the election of the Declarant from the date upon which the Declaration is recorded in the Office of the Register of Deeds of Union County, North Carolina, until such

time as their successors are duly appointed in accordance with Section 4.1, or duly elected and qualified, as described in Section 4.5.

The names of the persons who shall serve on the initial Board of Directors are as follows:

<u>Name</u>	<u>Address</u>
Stephen M. Schreiner	403 Gilead Road, Suite H Huntersville, NC 28078
Woodard E. Farmer, Jr.	401 South Tryon Street, Suite 3000 Charlotte, NC 28202
Susan L. Foster	403 Gilead Road, Suite H Huntersville, NC 28078

Section 4.3 Nomination. Subject to Section 4.1, nominations for the first election of the Board of Directors shall be made from the floor at a meeting of the Members. After such first election of Directors, nominations for election to the Board of Directors shall be made by a Nominating Committee or may be made from the floor at the annual meeting. Subject to Section 4.1, the Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors 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 and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 4.4 Election. Except as otherwise provided herein, the Board of Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation, these Bylaws and the Declaration. Subject to the terms of this Article 4, the persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 4.5 Term of Office. Each Director shall hold office for the term for which such Director was elected, or until his or her death, resignation, retirement, removal, disqualification or until his or her successor is elected and qualified. Subject to Section 4.1, at the first election of Directors, the Members shall elect two (2) Lot Owners as members of the Board of Directors for terms of three (3) years, who shall be Lot Owners receiving the largest number of votes. Members shall also elect two (2) Lot Owners as members of the Board of Directors for terms of two (2) years, who shall be the Lot Owners receiving the second largest number of votes. Finally, Members shall elect one (1) Lot Owner as a member of the Board of Directors for a term of one (1) year, who shall be the Owner receiving the next largest number of votes. At all annual elections thereafter, Director(s) shall be elected for three (3) year terms to succeed any Director(s) whose term(s) then expire(s). 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 4.6 Removal. Subject to Section 4.1, any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, such Director's successor shall be selected by the remaining members of the Board 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 remaining members of the Board.

Section 4.7 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 performing duties as a Director.

ARTICLE 5

MEETINGS OF DIRECTORS

Section 5.1 Regular Meetings. Meetings of the Board of Directors shall be held on a regular basis as often as the Board sees fit, but no less often than annually, on such days and at such place and hour as may be fixed, from time to time, by resolution of the Board. If a scheduled meeting falls upon a legal holiday, then that meeting shall be held at the same time on the next business day which is not a legal holiday.

Section 5.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days notice to each Director.

Section 5.3 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 5.4 Informal Action by Directors. Action taken by a majority of the Directors without a meeting constitutes Board action if written consent to the action in question 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 5.5 Chairman. A Chairman of the Board of Directors 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 of Directors and shall serve until a new President is elected.

Section 5.6 Liability of the Board. The members of the Board of Directors shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Members shall indemnify and hold harmless each of the Directors against all contractual liability to others arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the

provisions of the Declaration or these Bylaws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent that they are also Owners and Members.

ARTICLE 6

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.1 Powers. The Board of Directors, 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):

(a) To adopt and publish rules and regulations governing the use of the Common Areas and the personal conduct of the Members and their families, guests and invitees thereon, and to establish penalties for the infraction thereof;

(b) To suspend any Member's voting rights and right to use the Common Areas, during any period in which such Member shall be in default in the payment of any Assessment levied by the Association. Such rights may also be suspended (after notice and hearing) for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(d) To declare the office of a member of the Board of Directors to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(e) To employ a manager, management company, an independent contractor, or such other employee(s) as the Board of Directors deems necessary, and prescribe their duties;

(f) To grant all necessary easements and rights-of-way upon, over, under and across the Common Areas when the Board of Directors deems such action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sanitary sewer and other utilities or 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;

(g) To appoint and remove all officers, agents and employees of the Association, prescribe their duties, fix their compensation and require of them such security or fidelity bond as it may deem expedient;

- (h) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas and/or the Association;
- (i) To retain the services of legal, accounting and other professional firms;
- (j) To employ or retain the services of architects or other qualified persons to serve on or advise the Board on architectural, landscaping, or land use planning issues;
- (k) To maintain contingency reserves for the purposes set forth in the Declaration;
- (l) To enforce the provisions of the Declaration and any Additional or Supplemental Declaration and any rules or regulations made hereunder or thereunder;
- (m) To levy Assessments as more particularly set forth in the Declaration; and
- (n) To take any and all other actions, and to enter into any and all other agreements, as may be necessary for the fulfillment of its obligations under the Declaration or these Bylaws.

Section 6.2 Duties. The Board, for the benefit of the Members, shall have the following specific duties (without limitation of other duties the Board may have):

- (a) To maintain current copies of the Declaration, these Bylaws and other rules concerning the Development, as well as Association books, records and financial statements, available for inspection upon reasonable notice and during normal business hours by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots;
- (b) To supervise all officers, agents and employees of the Association to ensure that their duties are properly performed;
- (c) As more fully provided in the Declaration:
 - (1) To fix the amount of the Assessments;
 - (2) To send written notice of Assessments to every Owner before its due date; and
 - (3) To foreclose the lien against any Lot for which Assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same;
- (d) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid, which certificate shall be conclusive evidence of such payment;
- (e) To procure and maintain adequate liability insurance covering the Association, the Directors and officers, and adequate hazard insurance on the property owned by the Association, all in accordance with the Declaration;

(f) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, all in accordance with the Declaration;

(g) To maintain or cause to be maintained the Common Areas (including the upkeep and maintenance of associated improvements) in accordance with the Declaration;

(h) Until accepted for maintenance by the North Carolina Department of Transportation or other governmental authority, to own and maintain or cause to be maintained the Public Roads (including any swales and medians) to the standard of maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental authority, as the case may be, before it would accept such Public Roads for maintenance; and

(i) To maintain or cause to be maintained any sidewalks in the Development to the extent not maintained by a governmental authority.

ARTICLE 7

OFFICERS AND THEIR DUTIES

Section 7.1 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, from time to time, create by resolution.

Section 7.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 7.3 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 or her successor is elected and qualifies.

Section 7.4 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, from time to time, determine.

Section 7.5 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 7.6 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 7.7 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 7.4.

Section 7.8 Compensation. No officer shall receive any compensation from the Association, but may be reimbursed for his or her actual expenses in performing his or her duties as an officer.

Section 7.9 Duties. The duties of the officers are as follows:

(a) President. The President shall be the principal 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 preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall co-sign all checks and promissory notes.

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

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall keep the corporate seal of the Association and affix it on all papers requiring a corporate seal; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all funds of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; shall keep proper books of account; shall prepare an annual budget and a statement of income and expenditures to be presented to the Members at each annual meeting.

ARTICLE 8

COMMITTEES

Subject to Section 8.1, the Board shall appoint a Nominating Committee. In addition, the Board shall appoint other committees as it deems appropriate in carrying out its purposes.

ARTICLE 9

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, upon reasonable notice and during reasonable business hours, be subject to inspection by any Member. The Declaration, the

Articles of Incorporation and these Bylaws shall be available for inspection by any Member at the principal office of the Association.

ARTICLE 10

ASSESSMENTS

As more particularly described in, and subject in all respects to, the Declaration, each Member is obligated to pay Assessments to the Association. Any Assessments which are not paid when due shall be delinquent. If an Assessment is not paid by its due date as set forth in the Declaration, the Assessment shall bear interest as provided therein. Any late charges, costs of collection and reasonable attorneys' fees related to any such delinquent Assessment may be added to the amount of such Assessment. No Member may waive or otherwise escape liability for the Assessments provided for herein by non-use of his or her Lot or the Property.

ARTICLE 11

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words, THE NEIGHBORHOOD ASSOCIATION OF PONDSIDE,

ARTICLE 12

AMENDMENTS

Section 12.1 Procedures for Amendment. Except as provided otherwise in these Bylaws, and subject to the limitations hereinafter contained, the Articles of Incorporation and these Bylaws may be amended or modified at any time by a vote of no less than sixty-seven percent (67%) or more 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 sixty-seven percent (67%) or more of all votes entitled to be cast by the Members cannot be obtained at such a meeting, then the Articles of Incorporation and these Bylaws may be amended by obtaining the vote of sixty-seven percent (67%) or more of all votes present at a duly held meeting of the Members at which a quorum is present 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, sixty-seven percent (67%) or more of all votes entitled to be cast by the Members. Further provided, that any amendment or modification to the Articles of Incorporation and these Bylaws must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. In addition, Declarant, without obtaining the approval of any other Member or any other Owner or Owners, may make amendments or modifications to the Articles of Incorporation and these Bylaws which either: (a) are correctional in nature and do not involve a change which materially adversely affects the rights, duties

or obligations specified herein or therein; or (b) apply only to the portions of the Property then owned by Declarant.

Notwithstanding anything in this Section 12.1 to the contrary, Declarant may, at its option, amend the Articles of Incorporation and these Bylaws without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause these Bylaws or the Articles of Incorporation to comply with the requirements of the FHA, VA, Federal National Mortgage Association or any other governmental agency.

Section 12.2 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE 13

MISCELLANEOUS

The fiscal year of the Association shall be the calendar year and 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.

ARTICLE 14

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any Member, nor the Board of Directors, nor the Association, nor any officers, 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. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not 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.

The Association shall to the extent permitted by applicable law, indemnify, defend and hold harmless all Directors 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, defend and hold harmless 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 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 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 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 indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of Members or any disinterested Directors or otherwise 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 respective heirs, executors and administrators of such a person.

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.

The Association's indemnification 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, 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 14, 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.

EXHIBIT D
TO
DECLARATION
FOR
PONDSIDE

MAIL AND NEWSPAPER BOXES

THE CARDINAL MAILBOX

\$150.00

+ TAX

INCLUDES PAINT & INSTALLATION

**CONSENT AND SUBORDINATION
TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR PONDSIDE**

REGIONS BANK ("Bank"), owner and holder of the Note secured by the Deed of Trust Securing Future Advances, executed by Rogers Road, LLC, dated October 27, 2004, and recorded October 27, 2004, in Book 3596, Page 57, Union County Registry ("Deed of Trust"); and BRYAN F. KENNEDY, III, trustee under the Deed of Trust ("Trustee"), hereby consent to the terms and provisions of the Declaration of Covenants, Conditions and Restrictions for Pondside. Bank and Trustee agree that the lien, operation and effect of the Deed of Trust and the interest of Bank therein, are subject and subordinate, in all respects, to the terms and provisions of the Declaration, and that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration of Covenants, Conditions and Restrictions for Pondside.

This Consent and Subordination to Declaration of Covenants, Conditions and Restrictions for Pondside shall be binding upon Bank and Trustee, their successors and assigns.

IN WITNESS WHEREOF, the undersigned have duly executed this Consent and Subordination to Declaration of Covenants, Conditions and Restrictions for Pondside as of this

1st day of December, 2005.

BANK:

REGIONS BANK

By: James M. Ashcroft

Name: James M. Ashcroft

Title: EVP

TRUSTEE:

BRYAN F. KENNEDY, III,

TRUSTEE

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

I, Colette R. Dees, a Notary Public of Mecklenburg County, State of North Carolina, certify that James M. Ashcroft, (the "Signatory"), personally came before me this day and acknowledged that he is Executive Vice President of Regions Bank, an Alabama banking corporation, and that he, in such capacity and being authorized to do so, executed the foregoing on behalf of the corporation.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

(I have personal knowledge of the identity of the Signatory); or

(I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

a driver's license or

in the form of _____); or

(a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 1st day of December, 2005.

Notary Public

Print: Name: Colette R. Dees

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: September 21, 2009

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

COLETTE L DEES

NOTARY PUBLIC

MECKLENBURG COUNTY, NC

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

I, Colette R. Dees, a Notary Public of Mecklenburg County, State of North Carolina, do hereby certify that Bryan F. Kennedy, III (the "Signatory"), Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

(I have personal knowledge of the identity of the Signatory); or
 (I have seen satisfactory evidence of the Signatory's identity, by a current state
or federal identification with the Signatory's photograph in the form of:
(check one of the following)
 a driver's license or
 in the form of _____); **or**
 (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he and/or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 1st day of December, 2005.

Notary Public

Print: Name: Colette R. Dees

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: September 21, 2009

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

COLETTE R. DEES
NOTARY PUBLIC
MECKLENBURG COUNTY, NC

**CONSENT AND SUBORDINATION
TO SUPPLEMENTAL DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR PONDSIDE SUBDIVISION**

REGIONS BANK ("Bank"), owner and holder of the Notes secured by the Deed of Trust Securing Future Advances, executed by Rogers Road, LLC, recorded in Book 3596, Page 57, Union County Registry and by the Deed of Trust and Security Agreement (Future Advances) recorded in Book 3821, Page 296 in the Union County Public Registry (collectively, the "Deeds of Trust"); and WILLIAM DAWKINS, substitute trustee under the Deed of Trust ("Trustee"), hereby consent to the terms and provisions of foregoing Supplemental Declaration of Covenants, Conditions and Restrictions for Pondsides' Subdivision ("Supplemental Declaration"). Bank and Trustee agree that the lien, operation and effect of the Deed of Trust and the interest of Bank therein, are subject and subordinate, in all respects, to the terms and provisions of the Declaration, and that any subsequent foreclosure of the Deed of Trust shall not extinguish the Supplemental Declaration of Covenants, Conditions and Restrictions for Pondsides Subdivision.

This Consent and Subordination to Supplemental Declaration of Covenants, Conditions and Restrictions for Pondsides Subdivision shall be binding upon Bank and Trustee, their successors and assigns.

IN WITNESS WHEREOF, the undersigned have duly executed this Consent and Subordination to Supplemental Declaration of Covenants, Conditions and Restrictions for Pondsides Subdivision as of this _____ day of _____, 2007.

BANK:

REGIONS BANK, an Alabama banking Corporation

By: Matthew E. Farrell

Name: Matthew E. Farrell

Title: Vice President

TRUSTEE:

WILLIAM DAWKINS, TRUSTEE

WITNESSETH, that Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all those certain lots or parcels of land situated in the Town of Indian Trail, Union County, North Carolina and more particularly described as follows (collectively, the "Property"):

Being all of lot 44, Pondside (Villas Of Sun Valley), Phase 2, Map 6 as same as shown on plat recorded in Cabinet K, File 95 in the Union County, North Carolina Public Registry.

Being all of lots 64, 66 and 67, Pondside (Villas Of Sun Valley), Phase 2, Map 5 as same as shown on plat recorded in Cabinet K, File 94 in the Union County, North Carolina Public Registry.

Being a portion of the property conveyed to Grantor by Deed recorded in Book 3596, Pages 48 and 52, Union County Public Registry.

And Grantor covenants with the Grantee, that Grantor is seized of the Property in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, except for the exceptions hereinafter stated.

Title to the Property is subject to the following exceptions:

1. Ad valorem real property taxes for the year 2007 which Grantor agrees to pay; and
2. All easements, covenants, conditions, restrictions and other matters of record and matters that would be revealed by a current and accurate survey of the Property.

TO HAVE AND TO HOLD the Property and all privileges and appurtenances thereto belonging to the Grantee in fee simple.